SUPREME COURT OF THE UNITED STATES.

No. 178.

HENRY W. DRAKELEY, AARON FENTON, AND JOEL HINMAN, PLAINTIFFS IN ERROR,

vs.

RICHARD GREGG AND WILLIAM T. HUGHES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

INDEX.

	Original.	Print.
Style of court	1	1
Declaration	2	1
Agreement	3	2
Plea	3	2
Issue	4	2
Agreement	4	2
Jury and verdict	5	3
Judgment	6	3
Defendants' exceptions	7	4
Correspondence	7	4
Commission to Joshua C. Knickerbocker	95	48
Plaintiffs' interrogatories	97	49
Testimony of William T. Hughes	101	51
Exhibit A	111	55
B	112	56
C and D	113	56
2	116	58
3	118	59
4	120	60
Commission to Joshua C. Knickerbocker	123	61
Plaintiffs' interrogatories to Timothy Lynch	126	63
Plaintiffs' interrogatories to George E. Dorrington	129	64
Testimony of Timothy Lynch	131	65
Exhibits A and B	135	67
C and D	136	67
E	137	68

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B	112	56
C and D	113	56
2	116	58
3	118	59
4	120	60
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Plaintiffs' interrogatories to Timothy Lynch	126	63
Plaintiffs' interrogatories to George E. Dorrington	129	64
Testimony of Timothy Lynch	131	65
Exhibits A and B	135	67
C and D	136	67
E	137	68

	Original.	Print.
Exhibits F and G	138	68
H	139	69
I	140	70
Testimony of George E. Dorrington	140	70
Evidence of Richard Gregg	142	71
George C. Elliott	144	72
George L. Webb	147	73
Account current	148	73
Evidence of Henry W. Drakeley	151	75
Evidence of Joel Hinman	153	76
Plaintiffs' prayer, No. 1	153	76
No. 2, 3, 4, 5	154	77
No. 6, 7, 8, 9	155	77
Defendants' prayers, No. 1, 2	156	78
No. 3	158	78
No. 4	159	79
No. 5	160	79
Court's instruction	160	79
Writ of error	163	81
Writ of error bond	165	81
Citation	167	82
Clerk's certificate	168	83

1 THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

At a Circuit Court of the United States for the fourth circuit in and for the Maryland district, began and held at the city of Baltimore, on the first Monday of April, (being the first day of the same month,) in the year of our Lord one thousand eight hundred and sixty-seven. Present: The honorable William F. Giles, judge Maryland district, A. Sterett Ridgely, esquire, attorney, Washington Bonifant, esquire, marshal, James W. Chew, clerk.

Among other, were the following proceedings, to wit:

RICHARD GREGG AND WILLIAM T. HUGHES
vs.
HENRY W. DRAKELY, AARON FENTON, and JOEL HINMAN.

Be it remembered, that heretofore, to wit, on the 28th day of February, in the year of our Lord one thousand eight hundred and sixty-seven, the said Richard Gregg and William T. Hughes, by Severn Teackle Wallis and John H. Thomas, esquires, their attorneys, declared, in the Circuit Court here, against the said Henry W. Drakely, Aaron Fenton, and Joel Hinman, in a plea of trespass on the case, &c., in the words and of the tenor following, to wit:

2 *Declaration.*

In the Circuit Court of the United States, for the Fourth Circuit, in and for the District of Maryland.

THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

Henry W. Drakely, Aaron Fenton, and Joel Hinman, partners, trading as Drakely & Fenton, late of the district aforesaid, all citizens of the State of Maryland, were summoned to answer unto Richard Gregg and William T. Hughes, partners, trading as Gregg & Hughes, both citizens of the State of Illinois, in a plea of trespass on the case, &c.

And thereupon, the said plaintiffs, by Wallis & Thomas, their attorneys, complain for that whereas, the said defendants heretofore, to wit, on the first day of December, eighteen hundred and sixty-five, at the city of Baltimore, to wit, at the district aforesaid, were indebted to the said plaintiffs in the sum of thirty thousand dollars, for money before that time had and received to and for the use of the said plaintiffs, and being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay them the said sum of money, when the said defendants should be thereunto afterwards requested. Never-
3 theless, the said defendants, not regarding their said promises and undertakings, have not, nor has either of them, yet paid the aforesaid sum of money, or any part of it, to the said plaintiffs,

although so to do the said defendants were afterwards requested by the said plaintiffs, to wit, on the day and year last aforesaid, and often afterwards, at the district aforesaid, but to pay the same the said defendants have hitherto altogether refused, and do still refuse to do, to the damage of the said plaintiffs of fifty thousand dollars, and therefore they bring suit.

WALLIS & THOMAS,
Plaintiffs' Attorneys.

[50 cents U. S Int. Rev. stamp.]

Which said declaration is thus endorsed, to wit:

Mr. CHEW: Docket this case, by agreement, as of the November term, 1866, so that it shall stand for trial at the next April term of the Circuit Court. Enter the general issue plea, short; errors ~~now pending~~ hereby mutually waived.

Pleading being

WALLIS & THOMAS,
Att's for Pl'ffs.
JOHN H. B. LATROBE,
J. M. CAMPBELL,
For Def'ts.

And thereupon, came into the Circuit Court here the parties aforesaid, by their attorneys aforesaid and the said Henry W. Drakely, Aaron Fenton, and Joel Hinman, come and defend the wrong
4 and injury, when, &c., and say that they did not undertake or promise, in manner and form as the said plaintiffs have above complained against them, and of this they put themselves upon the country.

And the said plaintiffs do the like.

Thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by order of the court here thereon, is continued until the first Monday of April next.

At which said first Monday of April, to wit, in the year of our Lord one thousand eight hundred and sixty-seven, come again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Whereupon, the following agreement was filed in court here, which is in the words following, to wit:

In the Circuit Court of the United States for the District of Maryland.

Agreement.

RICHARD GREGG AND WILLIAM T. HUGHES
vs.
HENRY W. DRAKELY, AARON FENTON, and JOEL HINMAN.

The case instituted by the above-named plaintiffs against Henry W. Drakely and Aaron Fenton, two of the above-named defendants, in the Superior Court of Baltimore City, and removed to the Circuit for Baltimore County, having, for the convenience of all the parties,

been dismissed, so that this suit might be instituted, and the controversy tried, in the Circuit Court of the United States, it is agreed, that all of the costs incurred, on either side, in either of said
5 courts, shall be taxed, and abide the result of this suit, as if they had been incurred in this cause in the Circuit Court of the United States, and that the testimony already taken, under commission in said cause, may be used as if the same had been regularly taken under commission from the said last-mentioned court.

WALLIS & THOMAS,
Att's for Pl'ffs.
JOHN H. B. LATROBE,
J. M. CAMPBELL.
For Def'ts.

Whereupon, for trying the issue aforesaid, it is ordered by the court here, that twenty persons from the panel of petit jurors, returned to the court here, by the marshal of the Maryland district, aforesaid, be drawn by ballot, and thereupon, the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, thereupon the remaining twelve persons, being called, come, to wit:

Jury.

Jacob A. Preston, Henry Clay Ridgely, Joshua Plaskett, Jacob Beckley, Adam Wolf, John Myers, Roger E. Cooke, Julius B. Barrett, Wm. N. Burch, Wm. Snyder, Richard Hutchins, and Elias Scarboro'; who, being empanelled and sworn to say the truth in the premises, upon their oath do say:

Verdict.

6 That the said defendants did undertake and promise, in manner and form as the said plaintiffs have above against them complained, and they assess the damages of the said plaintiffs, by reason of the non-performance of the said promise and undertaking, to the sum of thirty thousand four hundred and fifty-one dollars and sixty-seven cents.

Judgment.

Therefore, it is considered by the court here, that the said Richard Gregg and William T. Hughes recover against the said Henry W. Drakely, Aaron Fenton, and Joel Hinman, as well the sum of thirty thousand four hundred and fifty-one dollars and sixty-seven cents, current money, his damages aforesaid, by the jurors aforesaid, in form assessed, as the sum of by the court here unto them, on their assent, adjudged for their cost

and charges, by them about their suit in this behalf laid out and expended; and the said Henry W. Drakely, Aaron Fenton, and Joel Hinman, in mercy, &c.

Memorandum.

Before the jurors aforesaid withdrew from the bar of the court here, the said Henry W. Drakely, Aaron Fenton, and Joel Hinman, by their attorneys, aforesaid, tendered to the court here the following bill of exceptions, which was by the court here signed and sealed, and which is in form following, to wit:

7 In the Circuit Court U. S. for the district of Maryland.

Defendant's exceptions.

GREGG AND HUGHES
vs.
DRAKELY AND FENTON.

The paintiffs to support the issue on their part proposing to offer certain letters in evidence, it was agreed that the entire correspondence on both sides, which is herein inserted, should be read to the jury, to be used by either party during the trial.

CHICAGO, ILL., *Jan'y* 6th, 1865.

Messrs. DRAKELY AND FENTON, *Baltimore, Md.*

DEAR SIRS: I have about one thousand tierces of sweet pickled hams and five hundred tierces of pickled shoulders, with some mess, prime mess, and extra-prime, which I would like to send to you, provided you think you could sell for good prices. Please let me know what you could get for the above to arrive, and what amount would you allow me to draw on the shipment.

The sales you made for McCabe and Hughes were all satisfactory. Mr. H. has retired and I have taken my sons in the house. The hog crop will be short one million.

Yours, truly,

R. McCABE & Co.

BALTIMORE, *Jan'y* 10, 1865.

8 Mess. R. McCABE & Co. *Chicago, Ill.*

GENT'N: Yours of the 6th inst. came to hand this morning and contents noted. Our market is quite firm for provisions, and the general impression is that the demand will be greater and prices will advance. We quote prices for to-day as follows: S. C. hams in pickle 21 c. 21½ c.; do shoulder, 18 c. 18½ c.; P. M. pork, $41 c. 42; mess, $42½ and $43; leaf lard, 24 c. 24½ c. We should be pleased to receive consignments from you, and would advance you, as follows, on sight-drafts, accompanied with bills of lading; on pickled hams say

$40 per tierce, do. shoulders $30 per tierce, mess pork $30 per barrel, p. m. pork $25 per b'rl. Should you favor us with shipments we will use our best endeavors to obtain for you the highest market prices.

Hoping to hear from you soon, we are, very resp'y y'rs,

DRAKELY & FENTON,
By LOUIS DUNAN.

P. S.—We have no doubt we could make quick sales soon after arrival.

CHICAGO, ILL., *January* 13, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

DEAR SIRS: Yours of the 10th is before me and contents noted. I will ship to you by the 16th fifteen hundred barrels of pork, and probably will ship 1,000 tierces of hams and 600 tierces of shoulders next week. I have about 500 tierces of prime lard; possibly I may ship that too. I will draw on the 1,500 b'rls on the 16th, as directed by you, for about $42,000. I will write fully on that day.

Truly yours,

R. McCABE & Co.

BALTIMORE 18 *Jan'y*, 1865.

Mess. R. McCABE & Co., *Chicago, Ill.*

GENT'N: Your favor of the 13th inst. is duly received advising of your purpose to ship to us 1,500 b'rls pork and draw $42,000, which meets our approval. The last contracts to government (Saturday 14th inst.) were at lower figures than we anticipated, and lower than our current quotations. The aggregate of prime mess was 10,000 b'rls, as follows: 1,000, $43 78; 1,000, $44 28; 1,000, $44 78; 5,000, $45 93; 500, $45 20; 1,000, $45 32; 500, $45 40; average, $44 81, subject to reinspection, and two iron hoops, costing $1 40, making the average $43 41; and the pay is about equal to a credit of 60 to 75 days, judging from the past 3 or 4 months. If you should receive this before having shipped any pickled hams and shoulders, you will please confine the shipment to small lot of say 50 or 100 tierces each, or withold your draft until they have arrived and are examined by us, because we find so much of the Chicago packing is not cured and is unfit for smoking by reason of frost or some other cause. Your climate is so cold that there seems to be no such thing as a thoroughly cured pickled ham or shoulder made; every brand we have seen this season has this objection. Would prefer receiving a sample for examination before [receiving a sample for examination before] making any considerable advances. Always give us as long a notice as possible of your purpose to draw, to give us time to raise money, which is now pretty tight.

Very resp'y,

DRAKELY & FENTON,
By JOEL HINMAN.

CHICAGO, ILL., *Jan'y* 16, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

DEAR SIRS: I have shipped to you fifteen hundred and four b'rls of pork; 655 b'rls of mess; 9 b'rls of extra; 356 b'rls of thin mess; mess marked A, extra E, thin B; 204 b'rls of prime mess, marked C; 232 b'rls of extra-prime, marked D; and 48 b'rls of rumps, marked F, on which I have drawn on you to the order of Gregg & Hughes for $41,000. I will ship to-morrow about 600 tierces of shoulders, and on Thursday I will ship the hams. I hope you will put the property in store on arrival until I come on, which will be in February. My opinion is that pork will be worth $50 in April; that it will make no difference, as to the price, whether the war is
11 over or not, the supply will not be equal to the demand.

Truly yours,

R. McCABE & Co.

CHICAGO, ILL., *January* 17, 1866.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

DEAR SIRS: I have shipped to you this day 603 tierces of shoulders in two lots. Please keep them separate and make out acc't of sales when sold accordingly. I will ship the hams this week if I can get the cars. I see by the telegraph that Fort Fisher has been captured. Wilmington will soon be a market for your city.

Truly yours.

R. McCABE & Co.

P. S.—I have drawn on you as directed.

[Telegram.]

CHICAGO, ILL., *Jan'y* 22, 1865.

DRAKELY & FENTON:

Don't negotiate for bill lading for nine hundred and eighty-three tierces of hams shipped yesterday by McCabe & Co., consigned to you. Hams belong to us; particulars by mail. Answer.

GREGG & HUGHES.

[Telegram.]

BALTIMORE, 24th *January*, 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.*:

Despatched received. Will wait receipt your letter.

DRAKELY & FENTON.

12 CHICAGO, *January* 22, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENT'N: We have been advancing large sums of money during the past winter to R. McCabe & Co., of this city to pack pork with, and have been getting from them their warehouse receipts with policy of insurance covering the same as security. We have been shipping

the property to New York on B. L. in our name, where it was held for our acc't. Some few days ago Col. McCabe, of the firm named, handed us a letter from your house, authorizing them to make sight-drafts on you on the bases of certain figures therein named, the drafts to be accompanied by B. L. These shipments they made without our knowledge, in their own name, and gave us only a portion of the proceeds of the drafts made on you payable to our order, viz: One for $41,000 and another for $18,000. To this we did not make any serious objections, as they had been cutting a few hogs with money obtained from another source and we presumed that they wanted to close up that acc't. There was still a considerable quantity of lard and hams remaining here which we supposed was sufficient to secure us for our advances here in addition to what we had in New York. Subsequently they shipped the lard to you on their own acc't, from which we got nothing yet. Col McCabe, however, told us that we should have the benefit of anything that might be in your hands from the sale of the property shipped you
13 on B. L., in the name of McCabe & Co., the lard included, after your advances and charges were paid. We were satisfied with that arrangement, and on Friday last proposed that we would ship to you in a few days the hams that were still here, there being then about 1,000 tierces in which we were interested, and we would not draw anything upon them until they were sold. Col. McCabe told us at that time that he would leave on Saturday morning for New York, and we were to attend to the shipping of the hams ourself. To our surprise, this morning (Monday) we find that McCabe did not go to New York as contemplated, but remained here and shipped the hams himself to your house on yesterday, (Sunday,) and left this morning for your city himself. Now, the last move, to us, does not look right, and we are not satisfied with it. We consequently write you all the facts in regard to our dealings with McCabe & Co., and will deem it as an especial favor if you will hold off making any further advances to them over and above the $41,000 and $18,000, sight drafts drawn in our favor. The property shipped you is virtually and legally ours, and we hold McCabe & Co's warehouse receipts for it. If you will delay the payment of anything further to McCabe and Co., until we can advise with them and ask them to direct the property to be placed with you for our acc't, we will feel very grateful to you, and if they refuse to comply with our request we can then take steps to compel them to surrender
14 the property or reimburse us for our advances. It is very unpleasant for us to ask you (as we are, comparatively speaking, strangers to each other) to do us the favor of protecting us from what may be a loss; but your well-established reputation of many years standing, warrants in the belief that you would do anything that is right, even to strangers, to prevent any advantage being taken of them if it is in your power. We have written you fully and freely on this subject, and hope that you will not feel any hesitancy in doing by us as you would wish to be done by. We do not wish your interests in the matter to be impaired in the least. We want

you to sell all the property consigned to you, but we do not want the proceeds paid over to McCabe & Co. until we are secured; nor do we want any sale for the future made unless the proceeds are to be placed to our credit. McCabe & Co. may have the very best intention in this matter, and we hope they have, but the course pursued is not exactly as we would have done, and we think very strange of McCabe & Co. for having moved property belonging to us without our advice or consent. We desire that they shall have the benefit of everything the pork, lard, shoulders and hams bring over the amount we have in them. We have carried them through in good faith and don't want to be unfairly dealt with now. This communication is strictly confidential. We will properly appreciate anything you may do for us and shall endeavor to make you satisfied of our intentions to reciprocate generously. We refer you to Messrs. A. L. Webb & Bro. of y'r city in regard to our ability, responsibility, and integrity. Asking your early reply, we are,

Yours, &c.,

GREGG & HUGHES.

BALTIMORE, 26*th Jan'y*, 1865.

Messrs. GREGG & HUGHES, *Chicago, Ill.*

GENT'N: Your favor of 22d inst. is received and carefully read. Mr. McCabe called on us yesterday and we showed him your dispatch. He said you did not own the hams, and his only object in raising money on them was to enlarge the margin on other property held by you, so that he would not be forced to sale in a panicky market. As far as we could judge, in our short conversation with him, he is apprehensive that your confidence in future market has broken down, and you having the control of all his goods, have determined to realize and make yourselves good to his great loss. He looks for a $50 pork market in the next 60 days, and having great confidence, is determined that this property shall be held. We told him, in substance, that we would not like to advance on a bill of lading of goods where any adverse interest was claimed, but would not refuse to do so if the goods were arrived and placed in our hands. He did not show us the bill, and we did not ask him whether the hams were consigned to us or not. He has now gone to N. York, and should he again approach us to negotiate an advance we do not see how we can refuse if (as we shall require) the goods are put on our hands unencumbered. We hope before his return that you will have adjusted the matter with him, so that he and we may act with your approval. It will probably be at least ten days before the goods arrive, giving you ample time to take such steps as your judgment may dictate.

Very respectfully,

DRAKELY & FENTON.
By JOEL HINMANS.

We have not advanced on lard; nor has he shipped any to us.

BALTIMORE, 26 *January*, 1865.

Mr. R. McCABE, *Saint Nicholas Hotel, New York.*

DEAR SIR: We received this morning the letter foreshadowed by Mess. Gregg & Hughes' dispatch, which you saw here yesterday. They say in substance that the hams and other property shipped by you are virtually theirs as collatteral security for advances made, and for which they have your warehouse receipts and policies of insurance; that the shipment of hams was made without their knowledge, and your assuming the control and ownership of them was contrary to their wishes and a violation of their rights. Yet, they say your intentions may be of the very best; and they hope they are. They will advise with you, or your house, and we trust that the
17 whole affair may prove to be only a misunderstanding, which will, as soon as you interchange views, be pleasantly adjusted. We have said to them, in reply, that we gathered from our conversation with you that you only desired to prevent your property being sold before such a time as your confidence led you to believe most to your interest; that we had intimated to you that we should not be disposed to negotiate an advance on the hams unless they were arrived and placed in our hands. We sincerely hope that you will be speedily able to reconcile the difficulties, and that all may act with mutual approval.

Very respectfully, yours,

DRAKELY & FENTON.
By JOEL HINMAN.

CHICAGO, *January* 25, 1865.

Mess DRAKELY & FENTON, *Baltimore, Md.*

GENT'N: Your telegram of yesterday came promptly to hand, saying that you would await the receipt of our letter, which you have no doubt received before this time, and now understand all about our transactions with R. McCabe & Co., and we think that you will agree with us, when we say that we are badly treated. Our transactions with Mess. McCabe & Co. were made in good faith, and we never for one moment supposed that they would be guilty of removing, on their own ac., property that we had furnished the
18 money to buy, and which we held warehouse receipts for. It was our intention to ship the stuff and have it disposed of to the best advantage, and, after reimbursing ourselves, pay the balance, if there might be any, to Mess. McC. & Co. As the matter now stands, we, as the absolute owners of all the property, marked [G,] and the 703 tierces of hams, not marked in that way, in the last shipment, ask you to hold it for our account and await our instructions in regard to the selling of it. You will have the control of the property on arrival, as it is consigned to you, and we do not want you to divest yourselves of that control, if you should be applied to for that purpose. We would like to have 25 or 30 thousand dollars placed to our credit with Mess. Henning, Flint & Pearse, by the 5th of Feb'y, in order to enable them to hold Mess. McCabe & Co.'s,

shipped by us to them. We intended using the proceeds of the 983 ts. hams shipped you, to take care of the New York shipments, and carry them beyond the present "panic," and hope that you can place $25,000 as we request, on ac. of the property in your hands. If you can do so please telegraph us, and we will let the parties in New York know of it at once. If you should not be able to get the b. l. for the last shipment of hams from McCabe, please inform us at once; but do not endorse the b. l. to him. Hold it in your possession, and receive the property, and pay the freight on arrival, whether you have the b. l. or not.

Yours, &c.,

GREGG & HUGHES.

BALTIMORE, 31 *January*, 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.*

GENT'N: Your favor of 25th inst. is received. We will be governed by your instructions so far as retaining the hams and refusing to endorse the bill of lading, if, as you suppose, we are the consignees named in it, as we wrote before we did not know it or ask McC. the question. We have not heard from him since he left here for N. York, the day before the date of our last. We must decline making an advance to you on the hams until the question of ownership is definitely determined and admitted by all parties interested. As it stands now, we imagine that McC. & Co. are to all intents the owners, being the shippers named in the bill; at any we could not become involved in property so situated. For the same reason we shall refuse to advance McC. & Co., if applied to, and refer to your letter for our good reason. Under date 28th inst. Mess. Clark & Co., Pittsburg, wrote us, "The Northern R. R. is badly blockaded, and all freights refused for Balt. by P. R. R. We cannot now definitely ascertain when receiving for y'r city will be resumed; but meantime all consignments arriving for you will be held here for opening of traffic or subject to your order." We presume the hams in question are now at Pittsburg, for an indefinite time.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

CHICAGO, *January* 31, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENT'N: Yours of the 26th inst. is at hand and contents noted. In reply we would say that after making the explanation that we did in our letter of the 22d inst., regarding our property that had been consigned to you without our knowledge or consent by R. McCabe & Co, we are somewhat surprised to hear you say that you do not see how you could refuse to negotiate with Col. McCabe if he applied to you again for advances on the aforesaid property if it is placed in your hands unencumbered. You certainly must be well aware that when bills of lading have been once executed they cannot be altered

without the approval of all parties, shippers, carriers, and consignees; and in this case you are the parties to whom the property is to be delivered, and we have in our former letter notified you that the property consigned to you by R. McCabe & Co., of this city, belongs to us. We again notify you that all the pork products shipped to you by R. McCabe & Co. is ours, and you must not negotiate for advances on the same with any other parties but us. We also
21 notify you not to divest yourselves of the control of any of said property by assigning b. of l., or in any other way, as you, we are legally advised, are responsible to us. You will consequently please confer with us in future in regard to the disposal of said property. We regret to be compelled to take this determined stand in the premises, but as Col. McCabe, of R. McCabe & Co., denies that we own the property in question, we must, to protect our own interests, pursue this course.

Yours, &c.,

GREGG & HUGHES.

You will understand distinctly that if you dispose of, in any way, the property consigned to you by R. McCabe & Co., without our consent, that we will hold you responsible for the value of it.

GREGG & HUGHES.

CHICAGO, *February 2d*, 1865.

Mess. DRAKELY & FENTON.

GENTLEMEN: This will be handed you by Geo. T. Elliott, esq., who has the charge and management of the flour department of our house. Mr. Elliott is making a tour through the eastern cities with a view of making some satisfactory arrangements, if possible, with some good and reliable flour and provision houses, for whose ac. we may have the pleasure of doing some business. As he must necessarily visit your city, we have thought it would be well enough for him, when calling on you, to introduce the subject of the disposi-
22 tion of the pork products shipped by McCabe & Co., belonging to us. We apprehend, no doubt, after you thoroughly understand the matter, that you will act in accordance with our request, and hold the property on your hands for our account if McCabe & Co. hesitates to instruct you to do so. Mr. Elliott will express our views to you fully, and will take any action in the premises with you that he may deem best for our interest. Relying on your generous influence and intelligence, in placing our property that is now, or may hereafter come into your hands, where it justly belongs, to our cr. with you, and assuring you that we will not only fully appreciate your services, but will take great pleasure in serving you in any way in return we can.

We are, very truly, yours, &c.,

GREGG & HUGHES.

BALTIMORE, 3*d Feb'y*, 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.*

GENT'N: Your favor of the 31st ult'o is received. You say we must be aware that when bills of lading are once executed they cannot be altered without the approval of all parties, &c. It was on this point that we based our remark that "we did not see how we could refuse to negotiate an advance to McCabe if he should apply, &c.," he being the shipper, and we the consignees, and the only parties interested, as far as appears in the bill of lading. However, as you will see by our subsequent letter, (31st,) we have de-
23 cided to be governed by your instructions as to retaining the control of the goods, or proceeds of them, and we now assure you that we have no wish to embarrass you, and will do all in our power to protect your interests. We hope, however, that as soon as you and Col. McCabe get together you will be able to arrange your differences pleasantly, and relieve us of any conflicting instructions. Are you sure that we are named in the bill of lading (783 tierces hams, as consignees?) Would not Col. McC., when contemplating his visit east, and the bearer of the bill, have been more likely to have taken a bill deliverable to his own order? And should you not notify the carriers at Chicago and Pittsburg of the facts, lest they might divert the shipment, if applied to for that purpose by the shipper, with bill of lading on hand? Acting on the supposition that we are the consignees, we have notified Clark & Co., Pittsburg, that no one is authorized to divert any goods consigned to us to any other place or consignee. We have heard nothing from McC. since he left.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

CHICAGO, *Feb'y* 6, 1865.

Messrs. DRAKELY & FENTON, *Baltimore, Md.*

GENTLEMEN: Yours of the 3d inst. is at hand and contents noted. You will please accept our thanks for the course you propose
24 to pursue in regard to the property you have of ours in your hands, that was shipped by R. McCabe & Co. In regard to the b. l. of the 983 ts. hams, we are very confident that you are the consignees in it. We will, however, get all the facts connected with it, and if we are in error will inform you of it. Mr. Geo. T. Elliot, of our house, we presume, is with you by this time, and has conferred with you in regard to our business with McCabe & Co. We handed Mr. E. several of McC. & Co.'s warehouse receipts for hogs, the products of which you have in part, the balance having been shipped to N. York. We have other receipts covering N. York shipments. McCabe did not ship the lard from the hogs (in the warehouse receipt that Mr. Elliot has,) to you, as he agreed to, but sent it to Liverpool, and in place of it, agreed that we should not only have the proceeds of sale of the 983 ts. hams shipped you, but also all the other pro-

perty of the brand of R. McCabe & Co. in your hands; and we, under our receipts, will hold the property, and can only say that, if McC. & Co. insist, we will not only recover it by law, as we are advised by eminent counsel that we can, but we will put the firm of McC. & Co. through in another way. Hoping that you and our friend Elliot can induce McC. & Co. not to make any further interference, and will let you go on and sell the property for our account, of which we will account to them to the last farthing

We are truly yours, &c.,

GREGG & HUGHES.

25 We do not want to make any exposure of this matter, as it would certainly injure McC. & Co. here, and that is not our desire; but if they desire us to do it, we will have to do it, let the consequences be as they may. We claim the whole of the property—the hams, pork and shoulders—our receipts cover them, besides the lard which has gone in another direction.

Y'rs, &c,

G. & H.

ST. NICHOLAS HOTEL, *Feb'y 5th*, 1865.

Messrs. DRAKELY & FENTON, *Baltimore, Md.*

DEAR SIRS: I have written to Messrs. Greeg & Hughes to meet me in your city about the first of this week. I have not received their reply yet, but I will leave here Monday night or Tuesday morning for your city, and hope one of them will be there. Probably I will will receive a letter from them to-morrow upon the subject.

Truly yours, &c.,

R. McCABE.

ST. NICHOLAS' HOTEL, *Feb'y 6th*, 1865.

Messrs. DRAKELY & FENTON, *Baltimore, Md.*

DEAR SIRS: I received a letter from Gregg & Hughes yesterday, stating that neither of them could meet me in your city to arrange our misunderstanding. I will leave this evening for Chicago direct, where I hope meet them. I wish you would advise me if the property has arrived, and how it turns out. I hope you will not
26 dispose of any part until I see you on my return from Chicago. Pork must advance very soon to $45.

Truly yours, &c.

R. McCABE.

BALTIMORE, 9 *Feb'y*, 1865.

Mr. R. McCABE, *Chicago. Ill.*

DEAR SIR: Your favor, dated at St. Nicholas Hotel, 6th inst., did not reach us until yesterday morning. The shipments of pork, shoulders and hams have been delayed very much by the crowded condition of the

Northern Central Railroad. Part of the time the Pittsburg transfer agent had orders to stop all goods for Balt. Now goods are arriving in tolerable time. Our receipts up to last night are 1,219 bbls. pork, 603 tierces shoulders, (which complete the bill of shoulders,) and 158 tierces hams, and our men had some four or five cars to work on to-day, not yet reported. We suppose the entire bills will be full in the four or five days. We have opened a few of the hams and shoulders, and are pleased with the appearance of them; no signs of frost, as we have observed. The weight is 20 to 30 lbs. less than we had supposed, and based our proposed advance in our first letter to you. That, however, can be arranged in the advance on the hams, when you and Messrs. G. & H. settle your misunderstanding, which we do no do not doubt has been done ere this, amicably and pleasantly. Our market is very dull; no anxiety either to buy or sell; there will be no demand until the government again comes into the market, and we have no intimation of that being very
27 soon.

Very resp'y,

DRAKELY & FENTON,
By JOEL HINMAN.

BALTIMORE, 9 *Feb.*, 1865.

Messrs. GREGG & HUGHES, *Chicago, Ill.*

GENTLEMEN: We have your favor of the 6th inst. Mr. Elliot called on us Monday 6th. Next day we rec'd a letter from Mr. McCabe, saying that he would be here in a day or two, but yesterday rec'd another, dated 6th, in which he said he would start for Chicago that night, and we suppose he is now there. We have rec'd a portion of the hams, and have advice from Pittsburg that the whole lot will come forward as fast as the crowded condition of the road will admit. Our receipts up to last night are 1,219 bbls. pork, 603 tierces shoulders, (full,) and 158 tierces hams, all in apparent good order. In naming figures we would advance to McC. & Co., we based our calculations on at least 300 lbs. tierces ham and shoulder. (We have generally found 300 to 320 the net weight of Ohio and Indiana tierces.) McC. & Co.'s we find, so far as examined, weight 280 to 290. We name this now, as we shall, when you and Mr. McC. get the matter straightened, so that we shall know in whose name to keep our account, make a new estimate, based upon the actual weight of the hams and shoulders, and the depreciated market for
28 all the goods; so that, if an advance is required on the hams, fix upon an amount low enough to give good margins on the entire shipments. We presume the lower sum named in one of your letters ($20,000) would be satisfactory, though we have not examined the matter with any care. Mr. E. proposed to leave here this evening, when we saw him last, (last night.) Have not seen him to-day.

Very resp'y,

DRAKELY & FENTON.
J. H.

If you adjust your matters amicably with McCabe, you had better send us bill lading of the hams and R. McCabe & Co.'s order to transfer all the goods to your account, or in some way, so we cannot be placed in any unpleasant predicament.

CHICAGO, *Feb.* 11, 1865.

Messrs. DRAKELY & FENTON, *Baltimore, Md.*

GENTLEMEN: Yours of the 9th inst. is at hand, and noted. We have been looking anxiously for Col. McCabe to return for some days, but, to our surprise, to-day we received a dispatch from Henning, Flint & Pearse, one of our correspondents in New York, saying that Mr. McCabe was still there. We delayed writing you or Mr. Elliot for the reason that we wanted to see McCabe, and ascertain what he proposed to do in the way of closing up our ac. We would now suggest that you telegraph H., F. & Pearse, at New York, asking if Mr. McCabe is yet there; and if they reply that he is, then let Mr. Elliot or yourselves telegraph him to come to
29 your city at once, and then try and get the matter of our business settled satisfactory, if possible. Mr. McCabe may go to Baltimore before you receive this letter, and if he does, our suggestions to telegraph is disposed of; or he may be here by Tuesday, which would be the time you should get this, and, if he comes, we will telegraph you immediately. We hope that our friend Elliot has presented our case satisfactorily to you, and will rely on you to protect our interest in every way you can.

Yours, &c.,
GREGG & HUGHES.

We write Mr. Elliot to-day to your care. If he should leave your city before our letter arrives, he has no doubt instructed you where to forward his letters; if he has not, you can return it to us. Our market for provisions are improving, and we hope for good prices yet.

G. & H.

CHICAGO, *Feb.* 22*d*, 1865.

Messrs. DRAKELY & FENTON, *Baltimore, Md.*

GENTLEMEN: Col. McCabe returned to Chicago on Friday last, and we have been trying to get our business with R. McCabe & Co. closed up in a satisfactory manner, but, as yet, have not succeeded as well as we had hoped we would. The preliminaries of a settlement has been gone through with, and we hope we will get it all in a shape to suit us very soon. It may be possible that our Mr.
30 Gregg may have to go on to your city with Col. McCabe to arrange matters, after every thing is arranged here; or if McCabe & Co. do not settle up with us as honorable men should, he may be compelled to go on and take some legal steps for our protection, which is a course we would regret very much to be drawn into. We appreciate, gentlemen, very much, the course you have taken in this matter, and shall endeavor to return your kindness in a generous

manner. You understand our position, we think, and will agree with us, when we say that we have been very badly treated by Mc. Cabe & Co. You will please advise us promptly if McCabe & Co. should, through themselves, or any appointee, attempt anything to get possession of the property in our advance, that may endanger our rights, and oblige,

Yours, very truly,

GREGG & HUGHES.

[Telegram.]

Dated CHICAGO, rec'd BALTIMORE, *Feb'y, 25th*, 1865.

To DRAKELY & FENTON.

McCabe has given us order for all property in your hands. We will send it on.

GREGG & HUGHES.

CHICAGO, *Feb.* 27, 1868.

Messrs. DRAKELY & FENTON, *Baltimore.*

GENTLEMEN: We telegraphed you on the 25th inst. "Mc-
31 Cabe has given us order for all stuff in your hands; we will send it on." We now write you on the subject, and would say that we made repeated efforts to get McCabe & Co. to surrender the property to us peaceably, but could not get them to do so. We finally concluded that we would take legal steps get possession of it, and on Saturday last our Mr. Gregg had all of his arrangements made to go on to your city and commence proceedings at once. We sent for Col. McCabe, and told him frankly what our course would be; he still held off until he found Mr. G. about leaving for the cars, when he concluded it was no use to hold out any longer, and he gave us the order for the property. We send the order to day to our friends A. L. Webb & Bro., of your city, and they will hand it to you. We adopt this course so as to avoid any further difficulty or misunderstanding. The order, if presented by a disinterested party, will pass into your possession in a legal way, which would be desirable to both you and us. We will not determine at present what disposition we will have you make of the property, but will in a few days. We would like you to place it to our cr. on ac. of the hams, $10,000 with Mess. Henning, Flint & Pearse, of New York, and $15,000 with Mess. David, Dows & Co., of New York, also; this amount is considerably below what you proposed in your letter of Jan. 22 to R. McCabe & Co. to advance them. If these am'ts are remitted
32 at once, it will enable us to hold McCabe & Co's property in New York until prices become better, which we are disposed to do. We hand you memorandum of property in your hands, which our order covers, subject to two drafts made by McCabe & Co. on you, with transportation and other regular charges. You will advise us of how much of the stuff is in Baltimore now, and what kind of condition it is in. In conclusion gentlemen, we can only

renew our thanks to you for the very liberal and just course that you have taken in this business, and you may rest assured that we shall endeavor to return the favor in a substantial and satisfactory manner. It will be our pleasure to correspond with you; and when we have property to place in your market, we will most undoubtedly place it in your hands, knowing as we do that our interest would have your especial care.

Yours, very truly,

GREGG & HUGHES.

Enclosed in foregoing letter:

Copy of Balt. Shipments.

Jan. 16,	McC. & Co.,	A 655 bbls.	mess pork.
		B 356 "	" "
		E 9 "	" "
		C 204 "	prime mess pork.
		D 232 "	extra prime "
		F 48 "	rump "
	17	H 309 tierces	shoulders.
	33	[G] 294 "	do.
	23	703 "	hams.
Jany. 23,		[G] 280 tierces	hams.

CHICAGO, ILL., *Feb'y.* 25, 1865.

MESS. DRAKELY & FENTON, *Baltimore, Md.*

DEAR SIRS: I have arranged with Mess. Gregg & Hughes to hold my pork, &c., about nine thousand bbls., and have given them an order on you for the proceeds of what is in your possession. I wish you would inform me what you can sell the pork, hams, and shoulders at for present delivery, or for May and June. I shall leave Monday morning for the east, possibly I may be able to call on you; that will depend what time I get to Harrisburg. I have the charge of a lady to Philadelphia; please write to me at the Saint Nicholas Hotel, N. York.

Truly yours,

R. McCABE.

BALTIMORE, 2 *March*, 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.*

GENT'N: We have your favor of 27th ulto., and carefully note its contents. Mess. Webb & Bro. have not yet handed us McCabe & Co's order. We suppose they will do so to-morrow. We have made an effort to-day to raise the money to remit to yr. N. York correspondents as requested, say $25,000, and find that we shall
34 not be able to accomplish it before our bank's next regular disc't day, Monday, 6th inst. We will that day remit so that your friends will receive the money on Tuesday, 7th inst. We

regret that we could not respond at once, but our demands have been unusually large for money this season, and we have a pretty tight money market. The McCabe & Co. pork and shoulders are all received, and 763 tierces of the hams, and as far as we have examined are in good order, though the shoulders and hams are not well adapted to to the demands of our jobbing trade, the hams too large and the shoulders narrow cut; but if we are not all wrong in our anticipations of the wants of the trade the next six months, they will be taken at nearly full prices. We thing 18 and 20 a fair quotation for the shoulders and hams now. The last government contracts for mess and prime mess pork were at $36 84 to 38 50, subject to reinspection, and two iron hoops costing $1 40 per bbl., payments "in such funds as may be furnished by the U. S.," which, judging from past business, means a credit of from two to three months. We have an exceedingly dull market, and could not now effect sales, except at a large reduction from the nominal quotations.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

BALTIMORE, 3*d March*, 1865.

35 Mr. R. MCCABE, *St. Nicholas Hotel, N. York.*

DEAR SIR: Your favor of the 25th ulto. is rec'd.; and we received by same mail letter from Mess. Gregg & Hughes, advising of your having given them the order referred to. We have a very dull market, and our quotations are merely nominal. Our commissary is in the market for proposals pretty frequently, which is our only dependence for sales of any considerable lots, and outside of that demand we do not think we could effect sales, except at a great reduction from quotations. We suppose 20 and 18 are about the fair value of the hams and shoulders; they are both too heavy to suit the general trade, and the shoulders, from having been frozen, are not sufficiently cured to go into smoke-houses. Government took yesterday about 1,200 bbls. p. m. pork, at from 37 28 to 37 50, so we are told; there has been no official announcement of the contract yet. They also took bacon, shoulders, and sides at prices about equivalent to 20 and 22½. The pork is subject to inspection, and two iron hoops which cost 1.40 pr. bbl. Your pork and shoulders are all received, and 763 tierces of the hams. We are having 20 tierces of the latter smoked, to see how they turn out; if all right, we shall smoke all that we can put into our jobbing trade.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

BALTIMORE, 4 *March*, 1865.

36 Mess. GREGG & HUGHES, *Chicago, Ill.*

GENT'N: The order of Mess. R. McCabe & Co. was presented yesterday by Mess. A. L. Webb & Bro. to our Mr. Fenton, who, not

being familiar with the language of your letter, and without reflection, accepted and returned it to them. To-day we called on them for it, and learned that they had returned it to you, and as we think it should be in our possession, you will please remit it to us on rec't of of this. We await your instructions in reference to disposing of these goods. We shall be disposed to hold as long as may accord with the views of yourselves and Mess. McCade & Co., but would say that this is not a market that we can sell on any particular day or week that we might wish to, and we should like to have discretion to offer the pork in response to commissary advertisements from time to time.. The hams and shoulders must all be sold before warm weather, or else be all rehandled at great expense. In their present condition we would not consider them safe beyond May. Contracts were awarded 2d inst., for 7,600 bbls. p. m. pork, at $37, 37.30, 37.33, and 37.35, subject to inspection, and iron hoops costing $1.40, and indefinite pay, probably two or three months.

Very resp'y.,

DRAKELY & FENTON.
By JOEL HINMAN.

37 CHICAGO, *Feb'y.* 25, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENTLEMEN: You will please place the proceeds of all the pork products consigned to you by us to the credit of Mess. Gregg & Hughes, of Chicago, Illinois, and oblige,

Yours, &c.,

R. McCABE & CO.

Accepted Mar. 20, '65.

DRAKELY & FENTON.

BALTIMORE, 6 *March*, 1865.

Mr. R. McCABE, *Saint Nicholas Hotel, New York.*

DEAR SIR: We wrote you in reply to yours from Chicago; since then we have received from smoke-house a few of the hams and shoulders of your brand, and find that they are more than one-half tainted, and all of them fresh, evidently from having been frozen while in process of curing, and we fear that they will not cure in their present condition, being too closely packed to admit the pickle around and between the pieces; if so, they must all be rehandled before the weather is much warmer. We hope you may have time to come here before you return to Chicago and examine them yourself, and give us the benefit of yr. experience.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

38 BALTIMORE, 6 *March*, 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.*

GENT'N: Since our last we have received form smoke-house a few tierces each of Mess. McC. & Co. hams and shoulders, which we had put in for trial, and the result is very unsatisfactory; more than one-half of them came out decidedly tainted, and all are very fresh, evidently not cured, by reason of having been frozen before the process of curing had progressed but little. We cannot now form an opinion as to what may be the effect of their remaining in pickle just as they are, but are doubtful about their curing, and if they are not cured by the time of temporary warm weather they must spoil. We shall watch them carefully, and may find it necessary to rehandle the entire lot. Under these circumstances, and looking solely to the goods as security for advances, we cannot now make the advance we proposed to do in in ours of 2d. With the most liberal estimate we can make, we have decided that $10,000 is as much as we can add to previous advances, and we remit to-day to Mess. Henning, Flint & Pearse $5,000, and to Mess. David, Dows & Co., $5,000, to debt of Mess. R. McCabe & Co., at 1–10 pr. ct. premium, say $10,010. We write by this mail to Mr. McCabe, at New York, advising him of the condition of the hams and shoulders, and requesting
39 him to come here that he may examine and give us the benefit of his experience in such cases.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

BALTIMORE, 6 *March*, 1865.

MESSRS. HENNING FLINT & PEARSE, *New York.*

GENTL'N: We enclose herein Thomas & Co.'s ch'k on Clarke, Dodge & Co., N. York, for $5,000, to your order for credit of Mess. Gregg & Hughes, Chicago, Ill. These gentlemen requested us to send you $10,000, but for reasons that we explain in our letter to them to-day we send only the above amount.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

Please acknowledge the receipt.

BALTIMORE, 6 *March*, 1865.

Mess. DAVID DOWS & Co., *New York.*

GENT'N: We enclose herein T. B. Rutter esq., ca's ch'k on Mechanics Bank, N. York, for $5,000, for credit of Mess. Gregg & Hughes, Chicago. They expected us to send you $15,000. We have explained to them why we only send the above am't.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

NEW YORK, *March* 8, 1865.

Mess. DRAKELY & FENTON, *Baltimore.*

40 DEAR SIRS: Your favor 6th inst., enclosing ch'k $5,000, for a'c Mess. Gregg & Hughes, is rec'd, and the am't placed to their c'r.

Yours, respectfully,
HENNING, FLINT & PEARSE.

NEW YORK, *Mar.* 8, 1865.

Mess. DRAKELY & FENTON, *Baltimore.*

GENTL'N: Your letter of 6, enclosing ch'k for $5,000 for the c'r of Gregg & Hughes, Chicago, rec'd this a. m., and the am't is to their credit with us. Mess. G. & H. advised us that you would remit us $15,000 for their cr.; please say when we may expect balance.

Y'r friends,
DAVID, DOWS & Co.

CHICAGO, *Mar.* 8, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENTL'N: We are in rec't of y'r favor of the 4th inst., and, as you request, we herein enclose Col. McCabe's order on you for the pork products. Its was our desire to have the order remain in your hands, and we would have returned it to you ere this, but our Mr. Hughes, who generally attends to the correspondence, has been unwell for a few days and absent from the office. In regard to the sales of the stuff, we will place the matter entirely in your own hands to use your judgment and discretion as to the best time to sell.

Trusting you may meet good prices, we are truly yours,
GREGG & HUGHES.

CHICAGO, ILL., *Mar.* 11, 1865.

41 Mess. DRAKELY & FENTON, *Baltimore, Md.*

DEAR SIRS: Yours was rec'd in New York, stating that you had put some of the hams and shoulders into smoke; and one rec'd here to-day, that they did not turn out well, and suggested that I should return through Baltimore. I am sorry that I did not receive the last letter before I left New York. I would have returned through your city. The reason you find the taint is, the meat is not cured, in consequence of the extreme cold winter. All the hams and shoulders were carefully packed after the animal heat was out. I would suggest that you open all the tierces and take out some in each, and put them into bulk, the balance head up, and put in a strong pickle, good; put in a little saleratus in each tierce, or possibly it would be better to take all the shoulders out of the tierces, and put hams into them, and put the shoulders into bulk. If the hams will sell as well by finishing the curing in bulk, you might take them out of the tierces, and bulk them too. You could no doubt sell the

tierces. Your experience must be great in the provision line, and I hope you will make the most out of the property for me. The hams and shoulders shipped to David Dows & Co. packed in the same way, turned out fine, and I hope you will find that you happened to get the tierces that were out in the weather, and consequently
42 frozen before they were cured. I have great faith in prices going up; the bears in New York are getting the advantage, but they [but they] will be bulls so soon as they get the pork into their hands. What am't of pork and cut-meats have you now in your city? What can you sell two thousand b'rls of mess and prime mess at, for June delivery, sellers option, 1,000 of each? Let me hear from you soon.

Truly yours,

R. McCABE & Co.

BALTIMORE, 15*th Mar.*, 1865.

Mess. R. McCABE & Co., *Chicago, Ill.*

GENTL'N: Your favor of 11th inst. is received. We think it will be best to act on your suggestion to bulk down the shoulders, and use those tierces, to give the hams more room, and overhaul the whole lot. It will be better to finish the curing of the hams in pickle than to bulk them, as the latter process would give them the appearance of a common plain ham. We cannot sell anything since gold has taken the downward turn; the whole trade is very much depressed, and confidence broken down; no sales making, except for current local demand, and large concessions have been made in that small trade. Sales of bulk shoulders to-day at 17 and 19, and mess pork at $36. We have no means of knowing the amount of stock here, but do not suppose it to be large outside of the accumulation of government contracts. It would be impossible to make a sale for forward delivery at anything near the present nominal quotations.

We shall use our best efforts to make best possible desposition
43 of your goods.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

CHICAGO, *Mar.* 15, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENTL'N: Yours of the 6th inst. was duly rec'd, and would have been answered more promptly had not the writer been confined to his sick room for some days past. We regret to hear that the hams and shoulders are not in as good condition as they should be. We presume that you have got hold of some of the tierces that were put up in the last of McCabe & Co's packing, which had not become fully cured. Those packed in November and the early part of December, we think, you will find all right; and the others will no doubt, after the lapse of a short time, become fully cured. In regard to holding on to the property for any great length of time, we can only say that it is not our desire to do so if we can avoid it without

sacrificing it. We wish to close up our a'c with McCabe & Co. at as early a day as possible. We would advise sales being made along gradually, in small lots if you deem it best. We certainly do not wish to head the hams and shoulders until warm weather, and hope that you will be able to sell them before that time. If anything is to be held let it be the pork. We regret that you could not consistently place more than $10,000 for us in New York. If you had made a remittance of $10,000 to each of our New York houses, it would have acom-
44 modated us very much, and then you would only be in advance about one-half the amount you proposed to McC. & Co. We hope that you may yet find it convenient yet to place some more for us, which we will deem as an especial favor. Our markets are dull.

Yours, very truly,

GREGG & HUGHES.

BALTIMORE, 20 *Mar.*, 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.*

GENTL'N: Your favor of the 15th inst. is received. On further examination of the bams and shoulders we became satisfied that they could not cure, and have to-day commenced rehauling the whole lot. We are bulking the shoulders in dry salt, and shall take out, and repack all the hams, using the same pickle, with enough additional salt to make it about 18° hydrometer strength; they were packed so very close and tight that the pickle could not penetrate them. Just now were we so disposed, we could do nothing towards effecting sales, and may as well stay out of the market as to endeavor to push sales, the effect of which would only be to further depress prices without accomplishing sales. We think there will soon be a reaction, or at least some point reached, at which parties will want to buy, and meantime we hope these hams and shoulders will have become sufficiently cured to offer. Regarding the pork, our only reliable customer for that is the government, and they propose to offer in response to the commissaries' advertisement as they appear.
45 As the market is now we cannot estimate the entire shipments of McC. & Co. to a figure any greater than we now have in them; and had the business been consumated, as we originally hoped, we should no doubt ere this have been compelled to ask for a margin. We shall spare no efforts to close the business, so as to make every dollar for the owners that can possibly be made.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

CHICAGO, ILL., *March* 20, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

DEAR SIRS: Yours of the 15th was duly received and contents noted There is a programme on foot, which will put pork up in New York within a few dasy to $40 and $42 for mess and prime mess. This please keep to yourselves; a combination is forming of the holders in Chi-

cago, New York, Cincinnati, St. Louis, and Milwaukie, to hold from three to four hundred thousand barrels, and only let the pork go on the market, as it is wanted and at increased prices, for each month; 150,000 b'rls will be controlled in New York, and the same am't in Chicago; 50,000 in Cincinnati; 20,000 in St. Louis; and the same am't in Milwaukie; that will be about all the new mess and prime mess in the country. When the above is fully arranged, the prices will advance in your city to the same as in New York, and probably higher, for as there is not much in your city the government
46 would probably take it at once, when they understand the programme. I hope you will manage the product of mine, which will pay me out, and I have no doubt but you will do so. Hams and shoulders will be very scarce. So much of both was put into prime mess and extra prime; the government will want all the pork in the country before the close of the season. I will write you in full within a few days, and post you up as to the plans for the future action of the parties referred to.

Truly yours,

R. McCABE & Co.

CHICAGO, *March* 29, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENTL'N: Yours of the 20th inst. is at hand and noted. We hope that the handling that you are going to give the hams and shoulders will put them in good shape for sale at an early day. The recent advance in pork throughout the country, we have no doubt, has caused a handsome improvement in price in your market; and if it continues to advance, as many think it will, we may hope for a good round price being realized out of what you hold for us. Whilst we are exceedingly anxious to have the property in your hands disposed of, as we could use the money invested to a good advantage, we would not urge the sale of it hastily, if the prospect of a further advance is anyways flattering. We presume that the bidding for government
47 pork in your city yesterday was made at good prices, as the value of it was no doubt based upon an advance. Our market has improved about $3.00 per b'rl within the last 5 days, and we think that meat of all kinds has fallen into the hands of monied men that have confidence in it.

Hoping to hear from you soon, that you have made some good sales of hams and shoulders, we are very truly, yours, &c.,

GREGG & HUGHES.

CHICAGO, *April 5th*, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENT'N: We have none of your valued favors at hand to reply to, and we write you now, saying that, from present appearances, we think you will soon have a market for provisions that will justify selling the pork, &c., in your hands belonging to us. The aggregate stock of pork in the country is by no means heavy, and is gradually being re-

duced in various ways. The stock here is in the hands of very strong parties, and they will not press in on the market until they can get satisfactory prices. That there will be a decided advance in pork products very soon is very generally conceded, but how much that advance will be no one can tell. We hope that you will soon be able to dispose of some of the hams and shoulders at good prices, and the pork also. We, however, think that it would be better to
48 hold the pork longer than the other stuff. Please give us your views on that point. Our New York balances will require us to place some funds there very soon; and, as we have calculated on the consignments to you to help us through, we beg leave to ask you whether, with the present prospects, you could not within a few days place $5,000 with Mess. Henning, Flint & Pearse for us, and accept our 30 and 60 days bills on you for $10,000 more, favor of Mess. David, Dows & Co., being a total of $15,000. If you can favor us in this way it will enable us to hold some property that may be greatly to our advantage to not have disposed of at present.

Trusting in your good judgment to handle our property to advantage, we are, very truly, y'rs, &c.,

GREGG & HUGHES.

BALTIMORE, 8 *Aprll*, 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.*

GENT'N: Your favor of the 5th inst. is received. Since our last we have repickled and repacked y'r entire lot of pickled hams and stored in cellars, and have bulked down in a good cellar the shoulders; shall in a few days try a few of the hams in the smoke-house, and as soon as possible get them before the trade. At present there is no demand beyond the small, immediate wants of jobbers, but we hope for an improvement, and shall avail ourselves of every opportunity to sell the hams and shoulders before very warm
49 weather, as they cannot be held through the summer except at great risk. We are not offering barrelled meats; we think it better to wait for a settling down of the minds of the people, so greatly unsettled by the recent great changes in the aspect of the war. We have considered your request to make a further advance on these goods, and must decline. Making the best estimate we can, the advances already made are larger than we would now make on duplicate shipments. We think this month will develop a much-improved market in all sorts provisions.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

[Telegram.]

Dated NEW YORK, *April* 10.
Rec'd BALTIMORE, *April* 10, 1865.

To DRAKELY & FENTON:

Please telegraph us how much you have for credit Gregg & Hughes.

HENNING, FLINT & PEARSE.

[Telegarm.]

BALTIMORE, 10 *April*, 1865.

Mess. HENNING, FLINT & PEARSE, *New York:*

No credit; property unsold.

DRAKELY & FENTON.

50 BALTIMORE, 13*th April*, 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.*

We received only 982 tierces of the McCabe & Co. hams, and have made claim on the railroad for the value of one tierce, short delivery. They inform us to-day that we must produce the bill of lading, or the claim cannot be adjusted; you remember we never had it. Will you procure it, if not in your hands, and forward by first mail. We have no progress to report in the sale of the McC. goods; our market is still lifeless. Col. McC. was here this week, and expresses himself well pleased with the manner we have handled the hams and shoulders.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

CHICAGO, *April* 14, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENT'N: Your favor of 8th inst. came duly to hand, and in the pressure of business has remained unanswered until now. We presume that the course you pursued with our hams was judicious and will result in our favor. The recent event in war-matters has, we think, checked any further decline in provisions, and it is not unreasonable to expect a much better market in a short time. We regret that you felt yourselves constrained to decline advancing more than the $10,000 you sent to New York on our 983 t's hams, as that is
51 only about $10 pr. t's. The advances you made on the pork and shoulders was more liberal. We hope that you will soon find a favorable market for the hams, and can close them gradually at satisfactory prices. While our interest is to have you realize the largest am't possible out of the shoulders and pork, we do not think it well to hold them until it becomes hazardous in consequence of warm weather. We presume that you have had the pork inspected; and if so, please send us duplicate inspector's certificates. The demand for cut meats here is quite brisk at present, and we have no doubt but that you will soon have, if you have not already, a large demand from the South. You will please keep us regularly advised of the condition of your market.

Yours, very truly,

GREGG & HUGHES.

CHICAGO, *April* 22, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENT'N: Your valued favor of the 13th inst. is at hand and noted. Col. McCabe has just returned, and we will see him and get the B. of L. for the hams from him and send it to you. The R. R. Co. can easily discover the number of t's hams they had for us, by referring to their way-bills. We are pleased to hear that the hams and shoulders are in good shape, as the present appearances are that they will bring a fine price; our market is entirely bare, and
52 the demand large for all kinds of cut meats, but particularly sweet pickled hams. We have advice from New York that the demand is good there, and the stock very light. Hams advanced over two cents per lb. in that market from Monday to Wednesday of this week. We hope that your market is also improving, and you will be able to get us a good round price for the hams and shoulders in a short time. If you should find any difficulty in making sales of the hams before warm weather sets in, would it not be a good idea to send some of them to New York. Please let us know what the expense would be to ship to New York, and what arrangements we could make with you to ship them there. We do not wish to change the market unless there is danger of warm weather, or that New York prices may be sufficiently above yours to justify. Please give us your views generally concerning the condition of the property you hold for us, and the price you can get, also the prospect of selling at an early day. Y'rs, &c.,

GREGG & HUGHES.

BALTIMORE, 27 *April*, 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.*

GENT'N: Your two favors, 14th and 22d inst., were duly received. We have now to advise you of sale of 100 tierces y'r pickled hams, at 18c., and also of considerable improvement in the demand
53 for provisions, and we hope the blue side of the business is over. We have not had the pork inspected, for the reason that we expect government will be the purchaser of it whenever it is sold, and they require inspection within 30 days of time of delivery; therefore, as long as its condition does not require inspection, it is better to let it remain uninspected. We note what you say about sending hams to New York. If that market should at any time be above ours, then merchants will come here and buy, so that the discrepancy of any thing more than the freight from here there, cannot long exist. We sell very frequently to the N. Y. trade, and have always found ourselves on a better stand point to make them come nere and buy, than to consign there for sale. No movement, to any extent in brl. pork, though prices are nominally $1 50 to $2 better. A small sale of p. m. this week was made at $27 50, and several lots of mess at $28 @ 28½, now held $29. We have sold about 60,000

pounds bulk shoulders this week, at 15 to 15¼. Yours would not bring 15, owing to objectional cut.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

NEW YORK, *April* 29, 1865.

Mess. DRAKELY & FENTON, *Baltimore.*

GENT'N: We have been expecting to have received from you some more money for the cr. of our mutual friends, Gregg & Hughes,
54 of Chicago. They, G. & H., advised us, some short time since, that you would be all sold out of their stuff, and that we would soon receive from you the balance of the $15,000. Will you please advise us in regard to it, and oblige y'r friends,

DAVID DOWS & CO.

BALTIMORE, 1 *May*, 1865.

Mess. DAVID DOWS & Co., *New York.*

GENT'N: Your favor of 29th ult'o is received. We have advanced Mess. Gregg & Hughes, on shipments, as largely as we purpose doing. Have made very little progress in sales. Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

CHICAGO, *May* 3, 1865.

Mess. DRAKELY & FENTON, *Balitmore, Md.*

GENT'N: Yours of the 27th ult'o is at hand and noted. We would suggest the propriety of examining a few b'r'ls of the pork, and seeing the condition of it. We are having our pork here overhauled and resaulted, as it is daingerous to let it run too long without some additional salt. You will use your best judgment for our interest, nor let ours in your hands spoil for want of salt. The sale of hams, 100 t's, at 18c., is quite satisfactory. Yet we are inclined to think that you will be able to do better with the balance of them.
55 We are anxious to have the hams and shoulders disposed of at the earliest possible time. We, however, would not urge sales if your market was advancing. We would be glad to have your views as to the net value of the property you have for us at the present market rates. We, of course, know that you cannot tell exactly what it would sell for, but we suppose that you can form an opinion something near the value. We would be pleased to have you furnish us with your ac. sales of each lot sold, and your ac. current when all is closed out. We can then keep the run of how the stuff is selling, and might be governed somewhat in selling off rappidly or gradually. Our market is very bare of cut meats. Sweet pickled hams are in demand at 17½ to 18½, and shoulders, 15 to 16; prime mess, $24 to $24¼; mess, $26 to 26½. You will keep us regularly advised of your market. Yours, very truly,

GREGG & HUGHES.

BALTIMORE, 8 *May*, 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.*

GENT'N: Your favor of 3d inst. is received. We will have the pork examined from time to time, and see that it has all received attention. It is now in the inspector's warehouse, and can be inspected at any time, should its condition require it. Have no sales to report since our last, other than jobbing trade in hams, which we are smoking in lots of 1,000 to 1,500 pieces, and selling as far as they run sound at 20c. Many of them came out of the smoke-
56 house sour in the marrow, a result which we feared from their being frozen before they were cured. We have made a rough estimate of your whole business based on present nominal prices, and the net balance is about $10,000. We requested you to send us the bill of lading 983 tierces hams, to enable us to make claim against the R.R. folks for one tierce short. We cannot make a beginning without the bill lading. The ag't here says that he would prefer that the claim should be made at Chicago, and let the agent there trace the thing up. Will you do it? We enclose copy of bill as we rendered it, which you may, if you please, try to collect of the ag't. If you cannot, send us the bill lading of the 983 tierces hams, and we will insist on settlement here.

Very resp'y,

DRAKELY & FENTON,
By JOEL HINMAN.

CHICAGO, *May* 12, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.:*

GENT'N: Your favor of the 8th inst. is at hand and noted. If Col. McCabe is in the city we will see him, if possible, to-morrow, and get B. L. and send it on to you, as the claim for the missing package, we suppose, must be collected at your city. We hope that you have been able to dispose of the greater portion, if not all, of our hams by this time at good prices, as also some of the other provisions of McCabe & Co., the proceeds of which, over and
57 above your charges and advances on them, is to be placed to our credit. The recent decline in provisions has completely checked operations here; except for the government they are buying in round lots to ship south to feed the famishing poor, both white and black. It will, no doubt, require all the pork in the country to supply this demand, if it should fall to the lot of the gov't to take care of the poor in the southern States, as they are very numerous, and it will be impossible for them to raise a crop of anything this year. You will please keep us regularly advised of sales made for our ac., and we hope that you will be able to close out the hams during the present month at satisfactory prices. We know that you will do the best you can for us; but we can use our money advantageously now, and consequently would be glad to have the stuff belonging to us sold at the earliest time possible to advantage.

Yours, very truly,

GREGG & HUGHES.

BALTIMORE, 18*th May*, 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.:*

GENT'N: We have to-day sold all the prim mess pork of the McC. & Co. shipm't at $20, subject to government inspection, and two iron hoops to be paid for when delivered. We sold to a man who had an unfinished gov'm't contract, and it seemed to be the best chance for prime mess. Our sales of smoked hams will
58 foot up about 350 tierces; and we are making very fair progress in selling, considering the dullest market we ever knew; are getting 19c. now for the best of them; hardly any of them are perfectly sound, and many decidedly tainted. Have kept at work constantly on the shoulders; can't sell them; they are a hard lot. Small sales of mess pork at $24.

Very resp'y,

DRAKELY & FENTON,
By JOEL HINMAN.

CHICAGO, *May* 22, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENT'N: Your favor of the 18th inst. is at hand and noted. We hope that you will continue to sell our hams until you get them all closed out. We hope that you will not have to submit to much of a reduction from your regular market rates for those that have the appearance of being unsound. Will you be good enough to let us know about how much per lb. was the expense incurred in handling them, so as to put them in the shape you now have them. You will please keep the ham ac. separate, and render the ac. sales of them regularly as you dispose of them, and your ac. current when all is closed out. The ham ac. sales, you understand, will be made direct to us. The pork and shoulders will be made out to R. McCabe & Co. for our use. We do not want to get the property confused by running it all together. The hams are exclusively ours, and
59 the other stuff we are to have the benefit of what may be in your hands when sold, after deducting your advances and charges on same. The sale of the prime mess pork was very low, but it was no doubt the best you could do with it. We will patiently await the time when you can report that you have closed all the property out in your hands in which we have an interest, particularly the hams. The shoulders we would not advise holding any longer. Keep us regularly advised of how you are progressing, and please send us ac. sales up to date.

Yours, &c.,

GREGG & HUGHES.

CHICAGO, *May* 31, 1865.

Mess. DRAKELY & FENTON, *Baltimore.*

GENT'N: We sent to our friends, Mess. A. L. Webb & Bro., the original B. L. for our 983 tierces hams, which they will hand you, and you will then be able to get pay from the R. R. Co. for the

missing ts. hams. They will also hand you a duplicate B. of L., with receipt on same, which you will please sign and return it to them, as it will be our voucher for the B. L. we surrender to you. We have nothing important to communicate to-day, except that our New York report shows an advance of over $1 per brl. on pork. We hope that you are making progress in the sale of our hams and McCabe & Co.'s stuff. as we are very anxious to have the
60 account closed up. Please send us ac. sales as you dispose of stuff.

Yours, very truly,

GREGG & HUGHES.

BALTIMORE, 5 *June*, 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.*

GENT'N: Your favor of 31st ulto. is rec'd, advising of your having sent to a third party the original bill of lading of 983 tierces hams shipped by Mess. R. McCabe & Co. to us, and a duplicate on which you had prescribed a receipt to be signed by us. The papers were presented on Saturday, and we have declined signing the receipt. The only use we have for the bill is to substantiate our claim on the N. C. R.R. Co. for one tierce hams short delivery, and there may be difficulty in collecting the claim without it. We shall, however, use our best endeavors to recover the cost of the missing hams. If we fail for want of evidence of their shipment, it will not be our fault. We do not propose to change the aspect of our relations to you as assignees of McCabe & Co. to receive from us whatever balance may be due them when their consignment of hams, shoulders, and pork shall have been closed. We have no sales to report of shoulders or pork; are pushing the hams as rapidly as possible; they are all tainted in the marrow, and many tainted all over. We think there are about 300 tierces unsold. Weather very warm, and we have to use great caution in smoking, not daring to risk in
61 any one smoking more than we are likely to sell within three or four days after they come out.

Very resp'y,

DRAKELY & FENTON,
By JOEL HINMAN.

CHICAGO, *June* 9, 1867.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENT'N: Yours of the 5th inst. is at hand and contents noted. Our object in sending the original B. of L. for the 983 ts. hams to a third party, and requesting them to take a receipt for it, was for the purpose of having a voucher in our possession to show to McCabe & Co. if there should be a difficulty in adjusting our accounts with them. When we consider the matter, it is of no consequence whether we have a receipt or not, as you have received all of the hams except the one missing tierce. You will please find the B. of L. for the 983 ts. hams enclosed herewith. The net proceeds of the

hams are for our special benefit; the other property, viz, the pork and shoulders, were are to have all they realize over and above your advances, commissions, freight, &c., on same. We hope that the advance in New York in price of barreled meats has caused a similar improvement in yours, and you will be able to dispose of what you have at good prices. You say that you have only about 300 ts. of our hams unsold. As yet we have not rec'd any ac. sales of those you disposed of. Have you no market for the shoulders? Please keep us posted up in regard to the prices, and do the best
62 you can for our interest.

Y'rs, very truly,

GREGG & HUGHES.

CHICAGO, *June* 27, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENT'N: We have none of your favors at hand for several days. Will you be good enough to let us know how many of our hams you have disposed of. We hear of several orders from your city on our market for cut meats, with reports that your market is very bare of hams and shoulders. If that is true, you have doubtless sold all our hams to good advantage by this time, and can report sales of all at once. We hope that McC. & Co.'s shoulders, held by you for our account, has also come in demand, and has brought satisfactory prices. What is the condition of the pork, and what are the prospects of selling it? We are very anxious to get our ac. with McC. & Co. closed up, and hope you will be able to render us ac. hams at an early day, and dispose of balance of property to advantage, so as to let us have some little benefit out of it, in addition to the proceeds of the sale of hams. Keep us advised of the state of the market, as we may find it advantageous to place some of the produce we are handling with you.

Yours, very truly,

GREGG & HUGHES.

63 BALTIMORE, 8 *July*, 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.*

GENT'N: Since our last we have been smoking and pushing off the McCabe hams as rapidly as possible, until the lot was reduced to 160 tierces, which we closed out in pickle at 20c. and a credit of 30 and 60 days; this is much better than we have done with any that were smoked. We have also sold 225 brls. of the mess at $26. We propose to sell occasional small lots of the pork from time to time, as opportunity offers, unless there should be favorable indications of improved prices. Government will take proposals for 1,000 p. m. Monday, which is the first time they have been in the market since Lee's surrender; the result of the offering then will be some indication of the feeling of the trade. We have not decided that we will offer any of the McC. mess; if we do, shall probably do so at about $30. Provisions generally appear to be looking up some what. Bulk

shoulders of desirable quantity, and cut, have sold at 15 this week, but we cannot get a bid so far for the McC.'s as they are quite objectionable. Shall keep them in the market, and hope we may be able shortly to effect sale of them at something near full prices.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

64 CINCINNATI, *July 5th*, 1865.

Messs. DRAKELY & FENTON, *Baltimore, Md.*

DEAR SIRS: I wish you would give me a statement of the quantity of property sold, with the prices, and am't on hand.

Yours truly,

R. McCABE.

BALTIMORE, 11 *July*, 1865.

Mr. R. McCABE, *Burnett House, Cincinnati, O.*

DEAR SIR: Your favor of 5th inst. is rec'd. We have sold of the shipment made by you all of the p. m. pork, (about 200 brls.) at $20; this lot was sold about two months since, latterly about 225 brls. mess, at $26. The hams were sold at a great variety of prices. We smoked the greater portion of them in lots of 50 to 100 tierces and jobbed them out to the trade; a very large portion of them were damaged, and every one was tainted in the marrow; the closing sale was 160 tierces in pickle at 20c. on a credit of 30 and 60 days; this was the best sale of all. The balance of the mess pork, all the bulk shoulders, and about 150 brls. and the rumps are all on hand. Government called for proposals yesterday for the first time since Lee's surrender; the successful bids amounted to 2,000 brls. at $22 35 to $23 40 for prime mess pork. The shoulders are not desirable, which is the reason they are not sold, for we have kept them in the market all the time. We propose to sell the mess pork in small lots
65 as wanted until all is closed up. The prime and rumps are not wanted now.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

NEW YORK, *July* 14, 1865.

Mess DRAKELY & FENTON, *Baltimore, Md.*

GENT'N: We presume you must be quite through with the sales of Gregg & Hughes provisions, and that we shall soon be in receipt of some money for their credit. Will you please advise us if you will have surplus enough in your hands to remit us the original am't. Mess. G. & H. advised us we would get from you, viz.: $10,000, if not this much by the change in markets, please say about the am't, and how soon we may expect it, or any part of it, and oblige,

Y'r friends,

DAVID, DOWS & CO.

BALTIMORE, 15*th July*, 1865.

Mess. DAVID, DOWS & Co., *New York.*

GENTL'N: Your favor of the 14th inst. is rec'd. The larger portion of the pork referred to is still unsold. We can make no intelligent estimate as to what Mess. G. & H.'s balance will be, or when it can be ascertained.

Very truly,

DRAKELY & FENTON.
By JOEL HINMAN.

CHICAGO, *July* 15*th*, 1865.

66 Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENTL'N: Yours of the 8th came duly to hand and contents noted. The sale of the balance of our hams was a very fair one at the time, but as prices have turned it would have paid to have held on a little longer. The present state of the pork market in N. York would seem to indicate that mess pork will continue to advance until the price of it will reach above $30, and then your market ought to enable you yet to get good figures for that you hold for our a'c. Will you be good enough to give us a statement of the sales made up to the present time, and also your opinion of the future prospects of pork in your city.

Yrs. very truly,

GREGG & HUGHES.

[Telegram.]

DATED CHICAGO, REC'D BALTIMORE,
July 19*th*, 1865.

To DRAKELY & FENTON:

What is your market for pork? Have you sold any? Answer?

GREGG & HUGHES.

BALTIMORE, 20 *July*, 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.*

Mess pork, thirty-one. No sales since our letter.

DRAKELY & FENTON.

CHICAGO, *July* 20, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*.

67 GENT'N: We are in receipt of your telegram to day, viz.: Mess pork, thirty-one (31) dollars. Sold none since our letter. We now write you, saying that it is our wish to get our business with R. McCabe & Co. closed up as soon as we can, but we cannot do so until we get your a'c. sales. As you have got all of our hams closed out, you can, no doubt, render us your a'c. of them at once. We hope that this advance in pork products, will enable you to dispose of the shoulders at a good figure, as any and all kinds of cut meats are in demand at good prices now. In regard to the pork, we would say, that it is our desire, and we know that is is Mess.

McCabe's wish to have it closed out on this advance. You will therefore please watch the market closely, and if you find that there any very strong probabilities of a reaction cut loose, but as long as the market remains firm with an upward tendency, we advise holding on. Please keep us, of the condition of your market, and if possible, telegraph us before selling.

Yours very truly,

GREGG & HUGHES.

NEW YORK, *July* 24, 1865.

Mess. DRAKELY & FENTON, *Baltimore:*

GENT'N: Your letter of the 15th inst. came duly to hand. We have been waiting to hear from Mess. G. & H., having advised them that we hoped they would have you close out their pork on
68 this advance, so that we could receive from you the amount they advised us you would remit us when the pork was closed out. We have a letter from Mess. G. & H. this a. m., dated 21st inst., in which they say they had written you to close out the stuff you have for them, but at same time say they do not want you to sacrifice it when the market is advancing. We now hope soon to be in receipt of a part or all of the $10,000, and we suppose that if you have sold a part or most of the stuff, you will soon be making a remittance for G. & H.'s cr. Our market for pork is entirely under the control of speculators, and is in just such a position that the prices may go up or down any day 1 or $2 per brl. This month will close out a good many contracts made by sellers, their option. And should the practice of short selling be discontinued, then the market would be governed by supply and demand. We shall be glad if, on receipt of this, you will have sold enough of Mess. G. & H. stuff to enable you to make us a remittance for their cr. Please advise us and oblige—

Your friends,

DAVID DOWS & CO.

P. S. Mess port sold at $30 on change, and closed at 30¾.

BALTIMORE, 27 *July*, 1865.

Mess. R. MCCABE & Co., *Chicago, Ill.:*

GENT'N: We enclose herein a'c. sales 983 tierces pickled
69 hams, net proceeds to your cr. $37,694 66. We are endeavoring to make sales of mess pork, but find no demand beyond the small wants of West India shippers, and they manage to find parties willing to sell 50 and 100 brl. lots at $30, while we call our market $31 a $32. We are in hopes that government will buy here enough to close out the not very large stock held here.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

We send duplicate a'c. of the hams to Mess. Gregg & Hughes. 2 o'clock. Have just sold 100 brls. mess at $31.

BALTIMORE, 27 *July*, 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.*

GENT'N: We now enclose duplicate acc't sales, 938 tierces pickled hams, ac. R. McCabe & Co., net proceeds $37,694. Since the receipt of yours of 20th we have been making efforts to sell mess pork at present quotations, but find there are no buyers, except an occasional small order among the West India traders, and some of these decline buying of us at $31. We learned from parties willing to sell at $30; since then we have accepted $30 for about 60 b'r'ls, and to day have same prospect of effecting a sale of perhaps 100 b'r'ls at $31. Unless government should buy in this market, the way the trade looks now, we shall have a tedious job retailing to
70 get through with the lot; so far have not been [been] able to get a bid for the shoulders; some strictly prime lots, Cincinnati, have been sold at 17 @ 17¼. Mess. David, Dows & Co. wrote, urging us to remit, for y'r c't, $10,000 00, or any part of it, balance, under your instructions, Feb. or March last, as soon as we shall have so far progressed in sales of pork as to be able to do so. Is it now your wish that we should do so.

Have sold the 100 b'l's, referred to above @ $31.

DRAKELY & FENTON,
By JOEL HINMAN.

BALTIMORE, 29 *July*, 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.*

GENT'N: We sold, yesterday, 100 b'r'ls McCabe mess pork @ $31, and to day 100 b'r'ls McCabe mess pork @ $32. We shall endeavor to push off the lot as rapidly as possible on this advance, but have a very limited field for opperations, the demand being confined to a few buyers, and competition quite active. Have been trying all the week to get the shoulders off, but can't find a buyer so far.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

CHICAGO, *July* 29, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENT'N: We are now in receipt of your favor of the 27th inst., with your ac. sales, in name of R. McCabe & Co., of sun dry lots of our
71 hams which you say, in your letter, is 983 t's. From the shape in which your ac. is made out, we cannot tell anything about the number of packets embraced in it, but presume that they are correct. In regard to your charges against the hams, we must say that we are very much dissatisfied with them, and do think that some of them must have been erroneously and not intentionally made. We object to the drayage, it being about 50 c. per t's for use of ice house and resalting, which we do not understand how you can make it; when you had them smoked, and again you charge for smoking 13,370 p's hams, a large portion of which you report sour and

damaged, which should not have incurred the expense you put on them, and we seriously object to it; finally, you close your account by charging us 5 p. c. commission on sales, the average date of which are about the 15th of April; this is an outrageous charge, and certainly is an unintentional error, and you will no doubt rectify it without hesitation. Having thus summed up our objections to the charges against our hams, we would say that we telegraphed you to day, viz.: Letter received, wait for our letters before selling pork. Now we cannot see why it is that you sell mess pork at the prices you did, when it is rapidly advancing in New York, and is to day selling there at $35. Can you not get very near the figures in
72 New York. We suggested in our former letter for you to hold on until you saw evidences of the price breaking, and then sell, but you go ahead and sell small lots at $30 & $31 for mess pork. We hope that you will not sacrifice any more of it unless you find the market breaking. Sell the prime pork, if possible, also the shoulders, but hold on to the mess pork until you hear from us in regard to it again. Please let us hear from you two or three times a week, so that we may know how you are succeeding in selling.

Y'rs, &c.,

GREGG & HUGHES.

BALTIMORE, 2 *Aug.*, 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.*

GENT'N: Your favor of the 29th ulto., is received. Our acc't sales, hams, is for 298 tierces sold in pickle, and 685 tierces sold smoked; the latter were taken out in lots of about 50 tierces at a time; and while we were progressing in sales of one of these 50 tierce lots, we would have another lot put in smoke, so as to never to be without a small stock of them; in that way each lot would come in and be added to what remained of the previous, so that we did not keep the several smokings distinct, not regarding it of any consequence; the 13,370 hams, however, were the contents of 685 tierces. To explain the charge for drayage, would say that on the arrival of the hams, at our depot, we had them all drayed to the
73 shore at a cost of 75 c. per load of 4 tierces. When we began to offer them for sale, we found that they were for the most part frozen, or had been so before salt had penetrated them sufficently to cure, and they could not be sold in that condition, nor could they be smoked without the certain destruction of them, so in March we concluded to overhaul the entire lot, and knowing from former experience that even then they would be certain to sour in any ordinary cellars if kept unto May, we employed two parties having ice-houses to do the work and store them in cold cellars, the same parties did the smoking, and this involves the second charge of drayage to and from these houses, one of them three miles distant. We did not contract for the work until a thorough trial of all the resources of the city to make the best possible terms, and the charge of $1 pr. t's, included all the salt used, cooperage, and labor; the salt alone costing more than one-half the entire bill. This ex-

pense, though large, was most judiciously incurred, and is just what we should have done had the hams been ours, and we should do the same again even at greater cost, for had they been stored in the best cellars in town, without the aid of ice, they would all have soured before the first of June, undoubtedly, and in that event your account would have been at least $10,000 less than it now is. We know of
74 one lot of 300 tierces Chicago hams, received in precisely the same condition that McCabe's were in, that were sold in June, at 14 c. 4 c. a piece for smoking, is as low as we could have it done, and is the uniform price of all the smokers. All these charges, drayage, overhauling, use of ice-house, and smoking is what we actually paid. In addition to which we paid storage and insurance, have furnished a large amount of labor, and the greater portion of the sales, were to our jobbing trade, entirely on a credit of 30 days, and legitimately chargeable with guarantee commission, for all of which we charge you 5 p'r c't, and which we have charged every account in our books, and have refused to receive any business for less, and it can't be done for less in this market. The actual average of the sales, taking the dates, is May 31st, but in calculating the average we dated forward enough to cover credit given, and the last sale of $9,452 20 was sold ½ 30, and ½ 60 days, so that the whole gross sum averaged June 30th. We have sold no pork other than advised. Your dispatch was rec'd Saturday; our market is sluggish and responds slowly to N. York, and the actual wants are so small that we must avail ourselves to sell when somebody wants to buy. We cannot go out to day or any day and sell out at what are called current quotations, and when we see evidence of the price breaking,
75 that is the time you can't get a mother's son in this town to buy 10 b'r'ls. The sales reported to you were at the current market rates of the day. To day we quote $34 for mess, but can hear of no orders to buy. We are trying to sell the shoulders and prime mess pork. We think the shoulders will do better two or three weeks from now, when the weather will be better for smoking. We hope we may finally wind up your business to y'r satisfaction, but you must remember that this is neither N. York or Chicago, but rather an old fogy village.

Yours truly,

DRAKELY & FENTON.
By JOEL HINMAN.

NEW YORK, *Aug.* 7, 1867.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENT'N: We have daily been expecting advices from you, in reply to our letters. If you have the least objection to reply to our letters on the subject we write you about, we will feel much obliged to you to so write us, and we won't annoy you with them. Our pork market is $34½ @ ¾ to day and dull. We enclose you acct. of pork and beef on hand 1st Aug't. We should not even addressed you on the subject we have, had not Mess. G. & H. advised us that we would receive $10,000 from you for their cr., and we want to know from you

whether we will, or will not, get it, or any part of it, and we surely can't but believe you would be willing to say that much to us. Please write on recp't of this.

Yr. frd's,

DAVID DOWS & CO.

76 BALTIMORE, 2 *Aug't*, 1865.

Mess. DAVID DOWS & Co., *New York*.

GENT'N: We have your favor of 1st inst. On rec't of y'r previous letter (24th) ult., we wrote Mes's. Gregg & Hughes as follows: "Mes's. David Dows & Co., write urging us to remit for your credit $10,000, or any part of it, balance under your instructions Feb. or Mar. last, as soon as we shall so far progressed in sales of pork to be able to do so. Is it your wish that we should do so?" We have not since heard from them, and intended to write you on receipt of their answer to the above question; we, however, acknowledge remissness in not acknowledging rec't of your letter. You will remember that our instructions to remit to you for cr. of C. & H. were as an advance, say $15,000 to you and $10,000 to another house in N. Y. After an examination of the property, and considering the then condition of the market, and looking solely to the property as our security, we declined making any greater advance than $10,000, $5,000 of which we sent to you, and $5,000 to the other house, this was last Feb. or early in March, and since then we do not remember that they have given us any instructions, as to the disposition of what may due them, except in general terms that they desired the business as soon as possible, so that they might realise what was yet in the property. And we do not believe we have discretion under that letter of Feb.
77 to pay money, except to their order, after such balance is ascertained. With that view we asked them the question above, and when we receive their answer will write you.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

CHICACO, *Aug't.* 1, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENT'N: Yours of the 29th ult. with advice of the sale of 100 brl's of mess pork for our ac. at $31 and 100 at $32 is at hand and noted. We had hoped that you would have been able to sell at very near, if not quite up to New York prices. We will expect you to do better with the balance, as the market is everywhere better than you report yours. If you have no sale for the prime mess or pickled shoulders would it not pay to ship them to N. York. The sale of this property has now been hanging on a long time, and we would like to have it closed up. If you have no sale for the p. pork or shoulders, please let us know what the cost would be to ship them to New York, and we will determine what to do in regard to it. Please keep us posted up regularly as to the state of y'r market.

Yours, very truly,

GREGG & HUGHES.

NEW YORK, *Aug't* 3, 1865.

78 Mess. DRAKELY & FENTON, *Baltimore.*

Your letter of the 2d received. We are much obliged to you for the same; it enables us to know the position you regard yourselves as placed. We, however, don't agree with you, that you are to await new instructions from Gregg & H. to enable you to remit us, they, G. & H., having directed you to do so, and also advised us that you would, and the fact that the very property, or a part of it, was property that should have come to us, instead of to you, we having accepted on it. We can't consent to your declining to pay over to us, and we again request that you will remit to us up to $10,00, more, having received $5,000 from you, which, with the $10,000, will make $15,000; and should your advances previous to G. & H's orders to remit us been such that the property does not net enough to pay us the whole $15,000, then we can't expect that amt. from you, as your advances made prior to the notice would be right for you to receive first. We have no idea that G. & H. will give you any different orders from what they did in Feb. last; indeed we would be very much surprised at anything of the kind being done by them, as this very property we advanced upon to them, and its going to you was by error; and they at once advised that they had directed you to remit us $15,000, and we can't consent to any other direction of the avails of this property, and we therefore trust that you will remit us the
79 whole on receipt of this, or any part you may have realize.d

Y'r friends,

DAVID DOWS CO.

CHICAGO, *Aug.* 3, 1865.

Mess. DRAKELEY & FENTON, *Baltimore, Md.*

GENT'N: Since we wrote you last we have none of your favors to reply to. As pork is gradually advancing, we hope you will be able to close out the balance of the mess pork a price that will make the whole lot average well. As you have been making sales lately that is putting you in funds, we would be pleased to have you remit $7,500 for our ac. to Mess' David Dows & Co., in New York. We are advised that the New York market is very active for pickled shoulders and prime pork, and as yours is very dull we would like to try the experiment of sending about 50 blr's or tierces of shoulders and 50 or 100 blr's prime mess, over there and have them sold. We are anxious to get our ac. closed up; and as the season is getting very far advanced we think it the best course to make the trial of the quantity of pork and shoulders named in N. Y. market, and we find it won't pay; we need not ship any more there. In the meantime you can no doubt dispose of what would remain gradually. The whole costs of transportation by water from Baltimore to New York and the expense of inspecting when there, provided the stuff would have to be
80 inspected again, will, we understand, not exceed $1 25 per package. Please let us hear from you at once in regard to the matter of shipping the shoulders and prime pork. We want to get

as much as possible out of them, and hope that you will do all that you can to assist us.

Yours, very truly,

GREGG & HUGHES.

NEW YORK, *Aug't.* 7, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENT'N: We have advice from Gregg & Hughes, saying that they had advise you to remit to us $7,500 for their cr., as they suppose you had sold enough of the provisions to justify it. Please advise us about when we may expect anything from you for cr. G. & H.

Y'r friends,

DAVID DOWS & CO.

BALTIMORE, 8 *Aug.* 1865.

Mess. DAVID DOWS & Co., *New York.*

GENT'N: We have your favor of 7th inst., we also have Mess. Gregg & Hughes instructions to you for their cr. $7,500. Our sales do not yet reach an amt. to cover advances. It is now our purpose to sell out as rapidly as possible, and as soon as we are in receipt of an amount beyond our acct. sufficient, we'll remit you; we think certainly, in all, this month we can accomplish it, though just now
81 we have no demand, and unless there is an improvement we may have to look to your market.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

NEW YORK, *Aug't.* 10, 1865.

Mess. DRAKELY & FENTON, *Baltimore.*

Your letter of 8th received, and we are glad to see you will remit us, as soon as you are in funds from sales, over and above your advances, made on this property, this is satisfactory to us.

Yr. friends,

DAVID DOWS & CO.

BALTIMORE, 9 *Aug.* 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.*

GENT'N: Your favor of 3d inst. is received and also one from Mess. D. Dows & Co., asking for remittance of $7,500. We have written them that when we shall have realized that amt. in excess of our acct. with you we will remit. We notice your suggestion to ship p. pork and bulk shoulders to N. York; we are in constant communication with the N. Y. trade, and if we cannot at any time see any advantage in selling there we will avail of it. It would not be necessary to ship the goods there in order to sell them, it can be done through the brokers just as well. The shoulders, we are satisfied, would
82 not do so well there at all now, and we think they will be wanted here on good terms before the close of this month.

The prime pork is well adapted to the want of parties who furnish supplies for ship stores &c., and we think can be placed well ere long. We cannot learn that there is any actual demand for brl. pork in N. York, that is where the brls. actually change hands, the reported sales are monthly settlements of the speculative operations. Everybody are away to the summer resorts, and business is very dull.

Very resp'y.

DRAKELY & FENTON.
By JOEL HINMAN.

CHICAGO, *Aug.* 14, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENT'N: Your favors of the 2d and 9th insts. are at hand and contents carefully noted. In reply would say that the explanation you make for the charges on our hams are well enough for your side of the question, but not entirely satisfactory to us. The charge for drayage is so much above what is customary in any other cities that we are dissatisfied with it. The item of $1 per tierce for overhauling is certainly an excessive charge. You say that the salt used cost one-half the entire bill, by that we are to understand that you had nearly a bushel of salt put into each ts. which
83 was an unnecessary quantity, and we cannot think that any experienced packer would use that much. The charge you make for commission is double that made in any other cities, and we cannot learn that any other commission house in your city asks or gets over 2½ c. With the view we take of it, and we think it is a correct one, you certainly ought in justice to make a liberal deduction from your charges, as they are unprecedentedly high, and if insisted upon unquestionably prevent us from making any further consignments to you for act. of our customers. It is our wish to try both New Yorka nd Baltimore with our provisions and produce, but we, as we said before, cannot pay your rates for commissions, &c., &c. In regard to remitting the am't of money we requested you to send to Messrs. D. Dows & Co., New York, for us, we do not understand why you did not send it, as the sale of our hams, with the charges you have made, (which we expect you will not hesitate to make satisfactory,) would leave a considerable balance to our credit in your hands. The net proceeds of the hams, you are aware, belongs to us, besides any excess there may be from the sale of the pork and shoulders, over and above your advances to R. McCabe & Co., is also to pass to our cr. Our hams are not to figure in any way in connection with provisions shipped by R. McCabe & Co., and drawn
84 against by them. We have your letter to McCabe & Co., authorizing them to make d'fts on bills lading for certain amounts on hams, shoulders, prime mess and mess pork, which we presume they done on all but the hams. They made no bills against them, from the fact that they had no right to do so, as the hams belonged to us. We, therefore, ask you again to place immediately, on rec't this letter, to our cr. with Mess. D. Dows & Co., in New York, $7,500, and the balance we will make our own d'fts for on

you, after we get the matter of charges settled. You say, in your letter of the 9th, that you cannot see any advantage in shipping shoulders and prime pork to New York, as the market there is no better than yours, nor sales for actual delivery more frequent. In reply to that, all we have to say is, that Mr. Orr, of the house of Dows & Co., is here now, and says that their market is very active for prime pork, at about the same price that prime mess sells at, and shoulders can be sold in any quantity there, as they are very scarce. If your market had any life in it, you ought to have been able to close out McC & Co's provisions long since, and not to have had them drag along until it is nearly the commencement of a new packing season. We trust that we will have your early reply, com-
85 plying with our requests herein, and hope that our future business with you will be mutually pleasant and satisfactory.

Yours, &c.,

GREGG & HUGHES.

BALTIMORE, 19 *Aug.*, 1865.

MESS. GREGG & HUGHES, *Chicago, Ills.*

GENT'N: In reply to your favor of 14th inst. would say, that we do not propose to make any abatement in our charges in the acc't sales rendered of hams, and to your repeated request to remit to Mess. D. Dows & Co., N. York, for your credit $7,500; that we shall not do so, until we have realised that amount, in excess of advances made on the property, hams, shoulders and pork, and your assumption that there is a distinction in the ownership of the hams, and of the pork and shoulders cannot be recognised by us, so far as it affects our ac't with Mess. R. McCabe & Co. We have never made any transfer of the property from that account, in which name it was orignally opened, nor have we been warranted in so doing by any order from them. What may be the facts, as between you and them, is not necessary for us to know; we cannot do otherwise than to credit the proceeds of sales of all the property to them, and when all is finally closed, whatever balance may be due them, will be agreeable to their order to that effect of Feb. last transferred to your
86 credit. We note your remarks about N. Y. market for prime pork and bulk shoulders. We hope we may be able to sell the former to good advantage here. The shoulders are not merchantable, and if shipped to New York would probably be, at least, one half rejected, and the portion rejected would not do so well there as here; either market, we feel confident, will be better, as soon as we have suitable weather for smoking, which will be very soon. We are exceedingly anxious to close the whole business, but will do so judiciously, and for the best interest of all concerned.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

NEW YORK, *Aug.* 22, 1865.

MESS. DRAKELY & FENTON, *Baltimore*:

Our pork market to-day closes from 31¾ a 32 mess, and 27 p. mess. We are daily expecting a remittance from you for the cr. of Gregg & Hughes, and we hope soon to have it. Have Mess. G. & H. directed you to ship us some of the pork you hold for them; they were to order some prime pork shipped, and pork shoulders, but we hear noting of it from you, will you please advise us in regard to it.

Y'r friends,

DAVID DOWS & CO.

BALTIMORE, 24 *Aug't*, 1865.

MESS. DAVID DOWS & CO., *New York.*

87 GENT'N: Yours of the 22d is received. We shall not need to be prompted to make you the remittance referred to, when we have the funds in hand from sales as advised. Mess. G. & H. sug. gested the policy of shipping to N. Y. a portion of the prime pork and bulk shoulders, but we shall be able to dispose of them as advantageously here, as we could there.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

BALTIMORE, 26 *Aug.*, 1865.

MESS. GREGG & HUGHES, *Chicago, Ills.*

GENT'N: We have none of your favors unanswered. Y'r sight dr'ft from D. Dows & Co. for $7,500 was presented to us to-day, and payment declined. We have sold this week 200 brls. McCabe mess pork at $32, and previously not advised, 15 brls. at $34, and 20 brls. at $33. There is evidently a better feeling pervading our provision market, and we confidently expect an improved demand from this time forward. Southern trade is coming in quite largely, and has been gradually increasing from the time of the opening of the ports, then very small, now approaching the importance of that trade before the war. We have not so far been able to sell any portion of the bulk shoulders, but believe that the delay is favorable to them, in improved weather for handling them, which will be very soon
88 now be cold enough to smoke, or if sold in bulk, give them a more favorable appearance.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

NEW YORK, *Aug.* 29, 1865.

MESS. DRAKELY & FENTON, *Baltimore.*

GENT'N: Your letter of 24 was duly rec'd. We are this a. m. in rec't of protest for non-payment of Mess. Gregg & Hughes' dr'ft on you, in our favor for $7,500, and the return of the dr'ft to us. We regret this, and presume that Mess. G. & H. will be very much dis-

appointed, as well as ourselves; and we trust that you will remit us the am't of this dr'ft by next mail, and the expenses protest to protect G. &. H. credit.

Y'r friends,

DAVID DOWS & CO.

CHICAGO, *Sept.* 1, 1865.

MESS. DRAKELY & FENTON, *Baltimore, Md.*

GENT'N: Yours of the 26th ult'o is to hand and remarks noted. As yet, we have no reply to our letter of the 14th Aug., to which we now respectfully call your attention. You say that our s'g't draft for $7,500, in favor of Mess. David Dows & Co., on you, was presented on the 26th ult'o, and you declined payment. Now, gentlemen, we must say we are very much surprised at y'r dis-
89 honoring our bill, and do not understand why you do not pay it, as you intimated you would do in your former letters to us. The balance due us on the sale of our hams is enough to warrant you in paying the dr'ft we made, and leave a large am't to our cr. in your hands. We hope that you will repair the error, (which we cannot think was intentionally made,) and remit Mess. D. Dows & Co. for our cr. the am't of our dr'ft on you, $7,500. You do not seem to be making very rapid sales of McCabe & Co. pork and shoulders, nor are you willing to ship the prime pork or shoulders to New York, where there is an active demand for them; nor do you seem disposed to close up for the [for the] hams sold for our own ac't, all of which seems to us as very unreasonable. We will patiently await your reply, and hope that you will not only advise us that you have remitted the am't of our dr'ft to D. D. & Co., New York, but also that you are closing out the balance of McCabe & Co. pork, and will render our ac't, and McCabe & Co., at an early day.

Yours, very truly,

GREGG & HUGHES.

BALTIMORE, *5th Sept.*, 1865.

MESS. GREGG & HUGHES, *Chicago, Ills.*

GEMT'N: Your favor of 1st inst. is received, in which you say you had not received any reply to yours of 14th Aug't. We wrote
90 you 19th Aug't in reply to that letter, and hand you herewith copy of same. Had you rec'd that letter, we presume that you would not have made the draft $7,500. We are disappointed in not having before this a market that would enable us to close up this business. We, however, cannot but believe that the probabilities of the near future are favorable in every aspect for a demand that will absorb every pound of old stock provisions before any new can be got into market, and at prices certainly not lower than the nominal quotations now. The trade from the south is assuming a magnitude, far beyond what was expected, and is increasing rapidly. The Richmond trade alone, we think, will want all the bacon sides and shoulders that are now in this market at present; they are buying sides exclusively, but a little later and they will want shoulders.

The prospect of the hog crop, and price now foreshaddowed, preclude the possibility of low prices the coming season. We do not, however, wish to hold the McC. goods a single day, with the view of obtaining advanced prices. All we want is the buyers to take them at current rates. We, as well as yourselves, are anxious to close out, and hope we shall be able to accomplish it very soon.

Very resp'y,

DRAKELY & FENTON.
By JOEL HINMAN.

NEW YORK, *Sept.* 11, 1865.

MESS. DRAKELY & FENTON, *Baltimore.*

91 DEAR SIRS: We still hold Gregg & Hughes' draft on you for $7,500; on receipt of this letter will you please let us know if you will honor it if we will send it forward to your city. The writer took this draft on your firm, Mess. G. & H., as cash in settlement of an account, and was assured by those gentlemen that you would pay it on presentation, as you held cash assets of theirs over and above all your advances for more than that am't. We do not like to remain in the position in which we are now placed. And would ask you in case you do not conclude to pay the draft, why you refuse. Is it because Mess. Gregg & Hughes are mistaken with regard to the position of their account with you. He told the writer positively that it would be paid, for the reason described above.

Your friends,

DAVID DOWS & CO.

BALTIMORE, 12 *Sept.*, 1865

MESS. DAVID DOWS & CO., *New York.*

GENT'N: Your favor of 11th inst. is received. In ours of 8th Aug't to you we said in reference to remitting to you for credit of Mess. Gregg & Hughes that "as soon as we are in receipt of an am't beyond our acc't sufficient, will remit you," and in ours of the 24th we said, "we shall not need to be prompted to make you the remittance referred to when we have the funds in hand from sales as
92 advised." We had written Mess. G. & H. very explicitly some time before they made the draft $7,500 in your favor, and have learned since from them that at the time of making the draft they had not received that letter; if they had received it we presume they would not have drawn.

Very resp'y,

DRAKELY & FENTON,
By JOEL HINMAN.

BALTIMORE, 13 *Sep't.*, 1865.

MESS. GREGG & HUGHES, *Chicago, Ill.*

GENT'N: We have sold 100 brl's more of the Mc. C. mess-pork, at $32 25, nearly closing out the mess. Have not been able to move the shoulders yet. The extraordinary continuance of warm weather

precludes the possibility of smoking safely, thereby keeping all demand for that purpose out of the market; we never knew such a long drawn out heated term as we have this year, thermometer ranging all the month from 88 to 80, day and night; now 6 o'clock p. m., 84° in this office. Bacon shoulders & sides selling very freely at 17¾ c 18¾ @ 19. Sale of 500 brl's inspected p. m. pork to-day $27, leaf lard 2,572 @ 26.

Very resp'y.,
DRAKELY & FENTON,
By JOEL HINMAN.

93 CHICAGO, *Sep't* 16, 1865.

MESS. DRAKELY & FENTON *Baltimore, Md.*,

GENT'N: Your favor of the 5th inst. enclosing copy of your letter of 19th ulto., also yours of the 13th inst., are at hand, and remarks carefully noted. We regret to learn that you have not been able to close out the remainder of McCabe & Co. pork and shoulders at a satisfactory price. Your city has orders every day on our market for pork and cut meats, which would indicate that your market was very bare at present. We know of several lots of pork that was sold here within the last ten days for your city. We hope that you will make every exertion to dispose of the unsold property in your hands in which we are interested at as early a date as possible. We have remitted Mess. Dows & Co. the am't of money that we directed you to pay them, consequently the net-proceeds of our hams, and any excess over advance on the McCabe & Co., provisions, you will account to us for. We certainly thought when we wrote you on the 1st inst. that there was some mistake about you not honoring our draft, but your reply of the 5th removes that impression, and we must now say that it is very surprising to us that you would not pay our bill when you have as large an amount as you now have belonging to us in your hands. You say that you cannot recognise any distinction in the ownership of the hams, shoulders, and pork that you received from McCabe & Co. and ourselves, and are not willing to make any further advances on them until all is disposed of.

94 Now, gentlemen, this is rather a singular view you take of the matter, and a novel construction you place on our acc't.; you certainly were aware from the beginning that the 983 trs. of hams belonged exclusively to us, and you also knew that we were to have the benefit of the excess over and above your advances of the sales of the provisions shipped you direct by McC. & Co. They drew on bills of lading as pr. your proposal in your letter to them dated Jan. 10, '65; the hams they had no right to value against, and did not do so, which you are well aware of we were the exclusive owners of the hams, and did not draw against them ourselves, which you are also aware of; we had you remit some money for our acc't to N. Y., which we expect to have charged up to our ham ac't, and the balance subject to our draft. Now this is a plain statement of the case, and we hope that we may not have occassion to discuss the subject any further. You dishonored our drf't after holding out the idea that

you would place the am't it was for to our New York correspondents. And now we feel as though we want our own ac't closed, and will hope to get your report of the sales of the pork and shoulders at an early day, so that we may get some benefit from that.

Yr's, &c.,

GREGG & HUGHES.

The plaintiff, to support the issue on his part, further offered in evidence the testimony of William F. Hughes, Timothy Lynch
95 and Dorington, taken under commission.

The State of Maryland, to Joshua C. Knickerbocker esq., Chicago, Illinois, commissioner named on part of the plaintiff and defendant.

Know ye that you are appointed commissioner to examine witness in a case depending the Superior Court of Baltimore city between Richard Gregg, William F. Hughes, plaintiffs, and Henry W. Drakely and Aaron Fenton, defendants. Therefore you are requested, after having taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission; that at such time and place as to you shall seem convenient, you cause to come before you all such witnesses as shall be named, or produced to you by the plaintiffs, and that you examine them upon their corporal oaths, to be by you administered on the Holy Evangely of Almighty God, touching their knowledge or remembrance of any thing that may relate to the cause aforesaid; and having reduced the depositions of the witnesses so taken by you into writing, you send the same, with this commission, closed under your hand and seal, to the judge of the said court with all convenient speed.

Witness the honorable Robert N. Martin, judge of our said court, the 14th day of May, in the year eighteen hundred and sixty-six.

Issued the 14th day of May, 1866.

96 [SEAL.] ALFORD MACE, *Cl'k.*

Commissioner's Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of these parties, take the examinations and depositions of all and every witness and witnesses produced and examined, by virtue of the commission hereunto annexed, upon the interrogatories now, or which may hereafter, before the said commission is closed, beproduced to and left with you, by either of the parties. So help you God.

JOSHUA C. KNICKERBOCKER.

The above oath was administered by me this 17th day of May, in the year 1866, to Joshua C. Knickerbocker, commissioner within named.

[SEAL.] THOMAS B. CARTER,
Clerk of the Supreme Court of Chicago, in Cook County, in the State of Illinois.

Clerk's Oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this case, take, write down, and transcribe the depositions of all and every, the witness or witnesses, produced before and examined by the commissioner or of them named in the commission hereunto annexed, as far forth as you are directed and em-
97 ployed by the said commissioner or of them, to take, write down, and transcribe the said depositions, or any of them. So help you God. ——— ———.

Superior Court of Balt. city.

Interrogatories to be propounded to William F. Hughes on the part of the plaintiff under a commission to Chicago.

GREGG & HUGHER,
vs.
DRAKELY & FENTON.

1st. Are you or not one of the plaintiffs? If yea, please state who constituted the firm of Gregg & Hughes at the time of the transactions in controversy in this action. State also whether it is in your power or not to be personally at the trial of this cause at the May term, and, if not, for what reasons.

2d. By whom was the correspondence in reference to the subject of this controversy carried on with Drakely & Fenton on the part of your house?

3d. State whether or not your house was, on the 22d of January, 1865, or previously thereto, interested in any way in any pork products from hogs killed and cured by R. McCabe, or R. McCabe & Company of Chicago; if yea, please state to what extent you were so interested; in what manner you became so, and what was the nature and character of such interest. State further whether any, if any, what shipments were made of such pork products previously to Jan'y 22d, 1865, to the defendants, Mess. Drakely & Fenton, and under what circumstances and by whom. State whether or not such
98 shipments, or any of them, were made with your knowledge or consent, and whether or not, after any such shipments, you assented thereto, and if you did, upon what terms and conditions, if any, and under what circumstances and to what extent.

4th. Did you or not receive from R. McCabe & [R. McCabe &] Company any portion of the proceeds of any drafts, or drafts drawn by him or them, on the defendants? If yea, state against what, or on the faith of what, so far as you know, said drafts were drawn and how you acquired any knowledge on the subject. State also the amount or amounts you received and whether or not there was, to your knowledge, or with your consent or participation, any agreement or understanding whatsoever on the part of said McCabe & Co., or said McCabe with Drakely & Fenton, or whether your house had any understanding with Drakely & Fenton, that the draft or drafts of the proceeds of which you may answer that you received any portion,

were to be regarded as drawn against, so on the faith or security of, the whole pork products of which you may have spoken, including the hams?

5th. Did you or not, on or about the 22d of January, 1865, address a letter to Drakely & Fenton in regard to the subject-matter of the previous interrogatories? If yea, and you have a copy of the same, please annex it to your answer to this question.

6th. Did you or not, at any time send an agent to Baltimore to see Messrs. Drakely & Fenton, in regards to the subject-matter of
99 the controversy? If yea, you will please state whom you so sent and what were his instructions.

7th. Look at the letter filed herewith marked No. 2. Please state whether or not it was received by your house, and when. Look at the part of said letter marked in brackets thus: ( ) where a purpose is intimated to make any advance on the hams therein referred to, only on the theory of leaving "good margins on the entire shipments." State whether your house acquiesced in such propositions or intimations, or repudiated it, or otherwise. Please state the cause and reasons of the course your house pursues, whatever it may have been. Explain fully.

8. Did your house ever assent or agree, or receive any consideration whatever from Drakely & Fenton, or any other person, for assenting or agreeing to the approbation of the hams referred to, in whole or in part, by Mess. Drakely & Fenton, as a security for advances made to McCabe, or McCabe & Company, or any other portion of the pork products in question, or at the time of the shipment of any portion thereof?

9. Look at the letter marked No. 3, and filed herewith. In whose handwriting is it? At the time of its writing, were, or not, the hams in question subject to the drafts therein referred to, or either of them, or had you agreed or assented, or asked or requested to assent to their being subject to the said drafts, or either of
100 them? Explain fully the circumstances attending the writing of said letter?

10. Have you any knowledge of any ante-dating of the endorsement on the bill of lading herewith filed, marked No. 4? State by whom, and when, and under what circumstances said endorsement was written and dated, and for what purpose.

11. Is R. McCabe, or the house of R. McCabe & Co., now indebted to you or not? If yea, to what amount, and since when, and on what security? Who, in fact, constituted the house of R. McCabe & Co. when these transactions took place?

12. State any other matter or thing not enquired of, which you may deem due to the justice of the case, or a proper understanding thereof.

WALLIS & THOMAS,
Pl'tff's Atty's.

Memorandum: Interlineations made before issue.

ALFORD MACE, *Clerk*

Return of commission.

STATE OF ILLINOIS, *Cook County, City of Chicago, ss:*

At the execution of a commission issued out of the Superior Court of Baltimore city, in the State of Maryland, the fourteenth day of May, in the year of our Lord eighteen hundred and sixty-six, (A. D. 1866,) directed to Joshua C. Knickerbocker, esq., Chicago,
101 Illinois, empowering him to examine witnesses in a case pending in said Court between Richard Gregg and William T. Hughes, plaintiffs, and Henry W. Drakely and Aaron Fenton, defendants, I, Joshua C. Knickerbocker, the commissioner in the said commission named, by virtue thereof, having met this nineteenth day of May, in the year of our Lord eighteen hundred and sixty-six, (A. D. 1866,) at my office, number fourteen Metropolitan block, in the city of Chicago, in Cook county, in the State of Illinois, and having taken the oath to the said commission annexed, proceeded to take the following depositions, to wit:

William T. Hughes, being first duly sworn in due form of law—

1. To the first interrogatory on the part of the plaintiffs he deposeth and saith: Yes. Richard Gregg and myself. It impossible for me to be present at the trial of this cause at Baltimore, at the May term of said court, for the following reasons:

1st. My wife and one of my children are sick, and under the care of a physician.

2d. I am obliged to change my residence within a week, and, as yet, have not been able to secure a dwelling-house for my family, and have no person on whom to depend, in my absence, to obtain one for me.

3. The business of our house being that of a general com-
102 mission business, and my familiarity with the details of it renders indispensably necessary for me to be in Chicago at this time, more particularly for the interest of our customers than our own benefit, as we have quantities of property in our hands belonging to many non-resident customers, placed with us by them for sale, which, if not attended to with special care, might incur heavy losses to them.

2. To the second interrogatory on the part of the plaintiffs, he deposeth and saith: Yes. By myself.

3. To the third interrogatory on the part of the plaintiffs, he deposeth and saith: Yes. On the 22d day of January, 1865, we were in cash advance to R. McCabe & Co., of Chicago, Illinois, not less than three hundred and sixty-six thousand ninety-nine dollars and three cents on pork products, slaughtered and cured by them. For said products we held R. McCabe & Co.'s warehouse receipts, which is the usual and customary security given here by provision packers to bankers or others for money advanced to carry on their business, (the property embraced in such receipts being always regarded as belonging to the party that makes the advance on them, until he is reimbursed on such advances, with any charges that may accrue on them from the sale of the same, or from some other sour-

satisfactory to the owner of said receipt.) Shipments of a
103 portion of the provisions covered by said McCabe and Co.'s warehouse receipts, viz, ten hundred and twenty barrels of mess pork, two hundred and four barrels of prime mess pork, two hundred and thirty-two barrels of extra prime pork, and forty-eight barrels of rump pork, were made on or about the 16th day of January, 1865, and six hundred and three tierces of shoulders, in sweet pickle, on or about the 17th day of January, 1865, to Mess. Drakely & Fenton, of the city of Baltimore, Maryland, without knowledge or consent.

McCabe & Co. showed us a letter from Mess. Drakely & Fenton, dated January 10th, 1865, which is hereto attached, marked Exhibit "A."

(I here receive from said witness the letter referred to by him, and duly mark said letter Exhibit "A," and attach said letter to this deposition.—Joshua C. Knickerbocker, commissioner.)

Prior to our knowledge that the pork and shoulders referred to had been shipped, but not until they had actually been shipped, and upon the propositions therein made for specific advances, we agreed to let said pork and shoulders go forward to Messrs. Drakely & Fenton, under bill of lading, in our own name, with R. McCabe & Co.'s sight-draft attached, in conformity with the letter referred to, dated January 10, 1865. We had not the most remote idea that said pork
and shoulders had been shipped at the time we proposed ship-
104 ping it in our own name, and as soon as we found it had gone we expressed our disapproval of it to McCabe & Co., but could only accept, as our alternative, McCabe & Co.'s draft on Drakely & Fenton, with bill of lading in McCabe & Co.'s name attached thereto, viz: forty-one thousand dollars on the pork, and eighteen thousand dollars on the shoulders, which we negotiated at the First National Bank of Chicago, Illinois. McCabe & Co., not being able to negotiate their drafts themselves, the net proceeds of which were fifty-eight thousand seven hundred and seventy-eight dollars and seventy-five cents. Our advances on said pork and shoulders being forty-nine thousand one hundred and two dollars and fifty-three cents, and not the full amount of said McCabe & Co.'s draft on Drakely & Fenton, we agreed to pay them the difference, nine thousand six hundred and seventy-six dollars and twenty-two cents, which we did in the following manner. Three hundred dollars in currency, our checks, which I attach hereto, on the First National Bank of Chicago, Illinois, and marked Exhibits "B and C," and attached to this deposition.

(I here receive from said witness the two check referred to by him, and duly mark said checks Exhibits "B and C," and attach them to this deposition.—Joshua C. Knickerbocker, commissioner.)

One of said checks, dated January 17, 1865, which was
105 paid, for one thousand dollars, and another, on the same bank, dated January 18, 1865, which was also paid, for eight thousand three hundred and seventy-six dollars and twenty-two cents.

To the fourth interrogatory on the part of the plaintiffs, he de-

poseth and saith: My answer to third interrogatory applies to this, with the addition, as follows: The drafts drawn in our favor on Drakely and Fenton, by R. M. McCabe & Co., were on account of pork and shoulders alone, nothing else being included. It was a separate and complete transaction in itself, without reference to any other consignment. We did not have any understanding with Drakely and Fenton ourselves in relation to the property against which the two drafts of R. McCabe & Co., referred to, were drawn, nor do we know that R. McCabe & Co. had any other understanding with those gentlemen, except that expressed in the letter of Drakely & Fenton, of January 10th, 1865.

To the fifth interrogatory on the part of the plaintiffs, he deposeth. and saith: We did write Drakely and Fenton on the 22d day of January, 1865, and telegraph them at the same time. In our letter, a copy of which I hereto attach, marked Exhibit "D"—

(I here receive from said witness the copy of the letter referred to by him, and duly mark said copy Exhibit "D," and attach said copy to this deposition.—Joshua C. Knickerbocker, Commissioner.)

106 We desired to put them fully and fairly in possession of all the facts for our security and their protection.

To the sixth interrogatory on the part of the plaintiffs, he deposeth and saith: We did send an agent to Baltimore, Maryland, to see Messers. Drakely and Fenton in regard to the subject matter of the controversy. It was George T. Elliott, esq., a gentleman engaged in our house. Our instructions to him were imperative. If Drakely and Fenton would not agree to place to our credit, and account to us direct for nine hundred and eighty-three tierces of hams, belonging to us, that had been shipped by R. McCabe & Co. to them against our instructions, and without our knowledge or consent, and also agree to place the excess, if there should be any, on the pork and shoulders shipped to them by McCabe & Co. prior to the shipment of the hams, over and above the drafts drawn against the said pork and shoulders, he, Elliott, should replevin or attach the hams at once. He was also delegated to secure any business for our house that he could while absent from Chicago; but his special business was to have our property, the hams referred to, placed, beyond any doubt, in our possession, or get unquestionable assurances from Messrs. Drakely and Fenton that the net proceeds of them should be paid to us direct, without reference to the pork and shoulders, in which we had only a contingent interest.

107 To the seventh interrogatory on the part of the plaintiffs, he deposeth and saith:

Letter marked number two, which is hereto attached, marked Exhibit "2." (I here receive from said witness the letter referred to by him, and duly marked the same, Exhibit "2," and attach said letter to the deposition.—Joshua C. Knickerbocker, commissioner,) was received by us on the 11th day of February, 1865, and as Mr. Elliott had been in Baltimore, Maryland, for some days at that time, we did not consider it necessary to reply fully to it. He, Elliott, had instructions what to do in the event of Messrs. Drakely & Fenton

refusing to place the hams to our credit. His letters to us seemed to remove any possibility of a doubt about Messrs. Drakely and Fenton not placing the hams to our satisfaction, and our wishes were so distinctly given to Mr. Elliott, which were to release the hams from any embarrassment, and not permit them to be held for any other account, directly or indirectly, but ours; that we did not give the subject of consolidating them with the pork and shoulders a thought. We had every confidence that Messrs. Drakely & Fenton would act in good faith with us, and (as Mr. Elliott's reports by letter were so full and satisfactory as to the recognition of our rights by Drakely and Fenton, and their promises to him to hold the hams for our special account, without any reference to the pork and shoulders,
108 or their advances thereupon) that we were perfectly satisfied, and deemed any further protection or precaution on our part as unnecessary. Some time afterwards we saw, on the part of Drakely & Fenton, a disposition in their letters to disregard their engagement, which we were slow to believe, and then only did we begin to be guarded in the language of our letters, lest we might seem to acquiesce.

To the eighth interrogatory on the part of the plaintiffs, he deposeth and saith: No.

To the ninth interrogatory on the part of the plaintiffs, he deposeth and saith: Letter marked number three, which is hereto attached, marked Exhibit "3," (I here receive from said witness the letter referred to by him, and duly mark the same Exhibit 3, and attach said said letter to, this deposition.—Joshua C. Knickerbocker, commissioner,) as in my handwriting; the hams in question were not subject, in any manner or form, to the drafts therein referred to, or either of them. We never agreed or asserted that they should be, nor do we remember that we were ever requested to give assent that they should. We supposed, after our letters to Drakely & Fenton, explaining our right, and in view of Elliott's agreement with them, and their own knowledge of the fact that they, Drakely and Fen-
109 ton, had authorized, in their letter of January 10th, 1865, previously referred to, the drafts made by McCabe & Co., on the security of the bills of lading of pork and shoulders, and nothing else; that they would understand our letters according to what they knew the fact to be, and as recognizing, as subject to the drafts, only the pork and shoulders. We were not writing with legal precision, but to mercantile correspondents, whose good faith we supposed would be above taking any advantage of a loose phrase, the real meaning of which they perfectly understood.

To the tenth interrogatory on the part of the plaintiffs he deposeth and saith: The assignment on the bill of lading, which bill of lading, with the assignment thereon, is hereto attached, marked Exhibit "4," (I here receive from said witness the bill of lading with assignment thereon referred to by him, and duly mark the same Exhibit "4," and attach said bill of lading and assignment thereon to this deposition. Joshua C. Knickerbocker, commissioner,) was written by our book-keeper with the knowledge and consent of R. McCabe &

Co. We had no idea of getting the bill of lading until after repeated requests from Drakely & Fenton for us to do so. The assignment was not made in any way to affect the title to the hams as between us and Drakely & Fenton, but only to enable them to make
110 reclamation against the railroad for a missing package of provisions.

To the eleventh interrogatory on the part of the plaintiffs, he deposeth and saith: Yes; R. McCabe & Co. was largely indebted to us when the hams were shipped, and are now owing us about seventy thousand dollars. Our account current commenced in November, 1864; our security was R. M. McCabe & Co.'s warehouse receipts for hogs and hog products; R. McCabe alone constitutes the firm.

To the twelfth interrogatory on the part of the plaintiffs he deposeth and saith: When the shoulders and pork were received by Drakely and Fenton they were worth considerable more than they had advanced on them, which was the reason we asked that when they were sold to have the excess, if any, over and above their advances and charges, passed to our credit on their books. They had the authority at any time to sell the same and reimburse themselves. We had no interest in the pork and shoulders unless they would sell for more than Drakely & Fenton's advances and charges on them, and could not have any interest in letting Drakely & Fenton have our hams as security for advances made specifically on the pork and shoulders, as we could have taken them by replevin, and have got advances on them without any embarrassment. Drakely & Fenton knew these facts, and, as we supposed, would, as intelligent
111 and skillful business men should have done, dispose of the pork and shoulders, close up that account, and place the balance, if there were any, over and above the two drafts drawn against them by R. McCabe & Co., with the charges on said pork and shoulders, to our credit; and if there was not an excess balance, but a deficit in that account, they would have had their reclamation on McCabe & Co.

WILLIAM T. HUGHES.

Taken and subscribed and sworn to before me this 19th day of May, A. D. 1866.

JOSHUA C. KNICKERBOCKER,
Commissioner.

[U. S. 5-cent rev. stamp.]

In witness whereof, I have hereunto set my hand and seal this 19th day of May, A. D. 1866.

[SEAL.] JOSHUA C. KNICKERBOCKER,
Commissioner.

[U. S. int. rev. two-cent stamp.]

Exhibit A."

BALTIMORE, *January 10th*, 1865.

Mess. R. McCABE & Co., *Chicago, Ills.*

GENT'N: Yours of the 6th inst. came to hand [came to hand] this morning and contents noted. Our market is quite firm for provisions, and the general impression is that the demand will be greater,
112 and prices will advance. We quote prices to-day as follows: S. C. hams in pickle, 21 @ 21½; do. shoulders, 18 @ 18½; P. M. pork, $41 @ $42; mess, $42½ @ $43; leaf lard, 24 @ 24¼. We should be pleased to receive consignments from you, and would advance you as follows, on sight-drafts, accompanied with bills lading on pickled hams, say 40 pr. tierce; do. shoulders, $30 per tierce; mess pork, $30 pr. brl.; p. m. pork, $25 pr. brl. Should you favor us with shipments, we will use our best endeavors to obtain for you the highest market prices.

Hoping to hear from you soon, we are, very resp'y, y'rs,

DRAKELY & FENTON.
By LOUIS DUNAN.

P. M. We have no doubt we could make quick sales soon after arrival.

This is the paper, exhibit, or document referred to by William T. Hughes in his examination, as the paper marked Exhibit "A."

JOSHUA C. KNICKERBOCKER,
Commissioner.

Exhibit B.

No. 79. CHICAGO, *Jan'y* 17, 1865.

First National Bank pay R. McCabe & Co., or bearer, one thousand dollars.

$1,000. GREGG & HUGHES.

Paid Jan'y 17, '65.

This is the paper, exhibit, or document referred to by Wil-
113 liam T. Hughes, in his examination as to paper marked Exhibit "B."

JOSHUA C. KNICKERBOCKER,
Commissioner.

Exhibit "C."

No. 90. CHICAGO, *Jany.* 18, 1865.

First National Bank—

Pay R. McCabe & Co., or bearer, eighty-three hundred seventy-six (22) dollars, ($8,376 22.)

GREGG & HUGHES.

[U. S. stamps two cents.]

This is the paper, exhibit, or document referred to by William T. Hughes in his examination as the paper marked Exhibit "C."

JOSHUA C. KNICKERBOCKER,
Commissioner.

Exhibit D.

CHICAGO, *Jan.* 22, 1865.

Mess. DRAKELY & FENTON.

GENTS: We have been advancing large sums of money during the past winter to R. McCabe & Co. of this city, to pack pork with, and have been getting from them their warehouse receipts, with policy of insurance covering the same, as security. We have been shipping the property to New York on B. L. in our name, where it was held per our account. Some few days ago Col. McCabe, of the firm of McCabe & Co., handed us a letter from your house authorizing them to make sight-drafts on you on the basis of certain figures
114 therein named, the df't to be accompanied by B. L. These shipments they made, without our knowledge in their own name, and gave us only a portion of the proceeds of the draft made on you payable to our order, viz, one for $41,000, and another for $18,000. To this we did not make any serious objection, as they had been cutting a few hogs with money obtained from another source, and we presumed they wanted to close up their ac. There was still a considerable quantity of lard and hams remaining here, which we supposed was sufficient to secure us for our advances here, in addition to what we had in New York. Subsequently they shipped the lard to you on their own ac., from which we got nothing yet. Col. McCabe, however, told us that we should have the benefit of anything that might be in your hands from the sale of the property shipped you on B. lg. in the name of McCabe & Co. the lard included, after your advances and charges were paid. We were satisfied with that arrangement, and on Friday last proposed that we would ship to you in a few days the hams that were still here, there being then about 1,000 tierces in which we were interested, and we would not draw anything on them till they were sold. Col. McCabe told us at that time that he would leave on Saturday morning for New York, and we were to attend to the shipping of the hams. To our surprise, this morning we find that McCabe did not go
115 to New York as contemplated, but remained here and shipped the hams himself to your house on yesterday, (Sunday,) and left this morning for your city. Now, this last move to us does not look right, and we are not satisfied with it. We consequently write you all the facts in regard to our dealings with McCabe & Co., and will deem it an especial favor if you will decline making any further advances to them over and above the $18,000, $41,000 sight-drafts drawn in our favor. The property shipped you is legally ours, and we hold McCabe & Co. warehouse receipts for it. If you will delay the payment of anything further to McC. & Co. until we can advise with them, and ask them to direct the property to be placed with you for our ac., we will feel very grateful to you, and if they refuse to comply with our request, we can take steps to compel them to surrender the property or reimburse us for our advances. It is very unpleasant for us to ask you to do us the favor of protecting our property, but your well-established reputation of many years standing warrants us in the belief that you would do anything that is right, even to strangers, to prevent any advantage being taken of them if

it is in your power. We have written you fully and freely on this subject, and hope you will not feel any hesitancy in doing by us as you would wish to be done by. We would not wish your interests to be impaired in the least. We want you to sell all the
116 property consigned to you, but we don't want the proceeds to be paid over to McC. & Co. till we are secure, nor do we want any sales for future made, unless the proceeds are to be placed to our cr. McCabe & Co. may have the very best intentions in this matter, and we hope they have. This communication is strictly confidential, and we will properly appreciate anything you may do for us, and shall endeavor to make you satisfied of our intentions to reciprocate generously. We refer you to Mess. A. L. Webb & Bro., of your city, in regard to our ability and responsibility.

Asking your early reply, we are, very truly, yours,

GREGG & HUGHES.

This is the paper, exhibit, or document referred to by William T. Hughes in his examination as the paper marked Exhibit D, and this letter contains four pages.

JOSHUA C. KNICKERBOCKER,
Commissioner.

Exhibit "2."

BALTIMORE, 9 *Feb'y*, 1865.

Mess. GREGG & HUGHES, *Chicago, Ill.*

GENT'N: We have your favor of 6th inst. Mr. Elliott called on us Monday, 6th; next day we rec'd a letter from Mr. McCabe, saying that he would be here in day or two, but yesterday rec'd another, dated 6th, in which he said he would start for Chicago that
117 night, and we suppose he is now there. We have received a portion of the hams, and have advices from Pittsburg that the whole lot will come forward as fast as the crowded condition of the road will admit. Our receipts up to last night are 1,219 brls. pork, 603 tierces shoulders, (full,) and 158 tierces hams, all in apparent good order. In naming figures which we would advance to McC. & Co., we based our calculations on at least 300 lb. tierces hams and shoulders, (we have generally found 310 to 320 the net weight of Ohio and Indiana tierces.) McC. & Co., we find, so far as examined, weigh 280 to 290. [We name this now, as we shall, when you and Mr. McC. get the matter straightened, so that we shall know in whose name to keep our accounts, make a new estimate based on the actual weight of the hams and shoulders, and the depreciated market for all these goods, so that if an advance is required on the hams, fix upon an amount low enough to give good margins on the entire shipments.] We presume the lesser sum named in one of y'r letters ($20,000) would be satisfactory, though we have not examined the matter with any care. Mr. E. proposed to leave here this evening when we saw him last, (last night;) have not seen him to-day.

Very respectfully,

DRAKELY & FENTON.
J. H.

If you adjust your matter amicably with McC., you had better send on bills lading of the hams and R. McC. & Co's. order to transfer all the goods to y'r account, or in some way, so that we
118 cannot be placed in any unpleasant predicament.

This is the paper, exhibit, or document referred to by William T. Hughes in his examination as the paper marked Exhibit "2."

JOSHUA C. KNICKERBOCKER,
Commissioner.

Exhibit "3."

CHICAGO, *Feb'y* 27, 1865.

Mess. DRAKELY & FENTON, *Baltimore, Md.*

GENTLEMEN: We telegraphed you on the 25th inst., "McCabe has given us order for all property in your hands; we will send it on." We now write you on the subject, and would say that we made repeated efforts to get McCabe & Co. to surrender the property to us peaceably, but could not get them to do so. We finally concluded that we would take legal steps to get possession of it, and on Saturday last our Mr. Gregg had all of his arrangements made to go on to your city and commence proceedings at once. We sent for Col. McCabe and told him frankly what our course would be. He still held off until he found Mr. G. about leaving for the cars, when he concluded it was no use to hold out any longer, and he gave us the order for the property. We send the order to-day to our friends A. L. Webb & Bro. of your city, and they will hand it to you. We adopt this course so as to avoid any further difficulty or misunderstanding. The order, if presented by a disinterested party, will pass into your possession in a legal way, which would be desirable
119 to both you and us. We will not determine at present what disposition we will have you make of the property, but will in a few days. We would like to have you place to our credit on ac. of the hams $10,000 with Mess. Henning, Flint, & Pearse, of New York, and $15,000 with Mess. David Dows & Co., of New York, also; this amount is considerably below what you proposed in your letter of June 20, to R. McCabe & Co., to advance them. If these amounts are remitted at once, it will enable us to hold McCabe & Co's property in New York until prices become better, which we are disposed to do. We hand you mem'm of property in your hands which our order covers, subject to two drafts made by McC & Co. on you, with transportation and other regular charges. You will advise us how much of the stuff is in Baltimore now, and what kind of condition it is in. In conclusion, gentlemen, we can only renew our thanks to you for the very liberal and just course that you have taken in this business, and you may rest assurred that we shall endeavor to return the favor in a substantial and satisfactory manner. It will be our pleasure to correspond with you, and when we have property to place in your market we will most undoubtedly place it

in your hands, knowing as we do that our interest would have especial care.

Yours, very truly,

GREGG & HUGHES.

This is the paper, exhibit, or document referred to by William T. Hughes in his examination as the paper marked Exhibit "3."

JOSHUA C. KNICKERBOCKER,
Commissioner.

120 *Exhibit* "4."

PITTSBURG, FORT WAYNE, AND CHICAGO AND PENNSYLVANIA RAILROADS. SPECIAL AGENCY. CLARKE & Co.

Clarke & Co. are the only persons authorized to offer shippers the facility of a fixed through rate of freight from all points west of Pittsburg to the eastern cities over the Pennsylvania railroad and its connections.

☞ All applications relating to the transportation of freights eastward, to be made at the office of the Pennsylvania Railroad Company, Philadelphia, or to Clarke & Co., special agents, opposite depot, Pittsburg, or to Clarke & Co., northeast corner Clark and Randolph streets, Chicago, or at the office of the Pittsburg, Ft. Wayne, & Chicago Railway.

CHICAGO, *Jan'y* 23, 1865.

Received from R. McCabe & Co. the following described packages, in apparent good order: Contents and value unknown, consigned to Drakely & Fenton, of Baltimore, State of Maryland, marked and numbered as per margin, to be transported over the line of this road to the company's freight station at P'gh., and delivered in like good order to the consignee or owner at said station, or to such company or carrier (if the same are to be forwarded beyond said station) whose line may be considered a part of the route, to the place of
121 destination of said goods or packages, it being distinctly understood that the responsibility of this company as a common carrier shall cease at the station where delivered to such person or carrier; but it guarranties that the rate of freight for the transportation of said packages from the place of shipment to the place where consigned, shall not exceed one 55-100 (1.55) cents per 100 lbs. and charges advanced by this company, upon the following conditions:

☞ The owner or consignee to pay freight or charges as per specified rates upon the goods, as they arrive by car loads.

☞ Freight carried by this company must be removed from the station during business hours on the day of its arrival, or it will be stored at the owner's risk and expense; and in the event of its destruction or damage, from any cause, while in the depot of the company, it is agreed that said company shall not be liable for any damage therefor.

It is agreed and is a part of the consideration of this contract, and the company will not be responsible for leakage of liquids, break-

age of glass or queensware, the injury or breakage of looking glasses, glass show cases, picture frames, stove castings or hollow-ware, nor for injury to the hidden contents of packages, nor for the loss of weight or otherwise of grain and coffee in bags, or rice in tierces, nor for the decay of perishable articles, nor for damages arising to any article carried, from the effects of heat or cold, or for the loss of nuts in bags, or lemmons or oranges in boxes, unless covered by canvas, or loss or damage to goods occasioned by providential causes, or by fire from any causes whatever, while on transit or at stations.

122

The company will not be responsible for damages on tobacco, unless it is proved to have occurred during the time of its transit over this road, and of this notice must be given within thirty hours after the arrival of the same.

Freight to be paid upon the weight by the company's scales.

☞ This company not responsible for accidents or delays from unavoidable causes. The responsibility of this company, as carriers, to terminate on the delivery of the freight, as per this bill of lading, to the company whose line may be considered a part of the route to the place of destination of said goods or packages. In the event of the loss of any property, for which the carriers may be responsible under this bill of lading, the value or cost of the same at the point and time of shipment, is to govern the settlement of the same. And in case of loss or damage of any of the goods named in this bill of lading, for which this company may be liable, it is agreed and understood that they may have the benefit of any insurance effected by or in account of the owner of said goods. These companies will not be responsible for the safety of the property below mentioned, beyond Harrisburg, Pa.

Gunpowder and friction matches not carried.

123 This receipt to be presented without alteration or erasure.

[Original.]

Marks.	Description of articles.	Said to weigh.
McC. & Co.	(703) seven hundred and three tierces hams.	
McC. & Co.	(280) two hundred and eighty tierces hams.	
[G.]	983	

P. R. R. Car 1163. M'ch 14. mst. 58. 1 t'ce hams.
[U. S. 5 cent rev stamp.]

Endorsed: For value received, we do hereby assign the within bill of lading to Gregg & Hughes, for their special use and benefit. Chicago, Feb'y 25th, 1865. R. McCabe & Co.

This is the paper, exhibit, or document referred to by William T. Hughes in his examination as the paper marked Exhibit "4."

JOSHUA C. KNICKERBOCKER,
Commissioner.

The State of Maryland to Joshua C. Knickerbocker, esq., Chicago, Ill., commissioner named on the part of the plaintiffs and defendants:

Know ye, that you are appointed commissioner to examine witnesses in a case depending in the Superior Court of Baltimore city between Richard Gregg and William T. Hughes, plaintiffs,
124 and Henry W. Drakely and Aaron Fenton, defendants. Therefore, you are requested, after having taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient, you cause to come before you all such witnesses as shall be named or produced to you, either by the plaintiffs or defendants, and that you examine them upon their corporal oaths, to be by you administered on the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cause aforesaid; and having reduced the depositions of the witnesses so taken by you to writing, you send the same, with this commission, closed under your hand and seal, to the judge of the said court, with all convenient speed.

Witness the Honorable Robert N. Martin, judge of our said court, the 31st day of January, in the year eighteen hundred and sixty-six.

Issued the thirty-first day of January, 1866.

[SEAL.] ALFORD MACE, *Clk.*

Commissioner's oath.

You shall, according to the best of your skill and knowledge, truly and without partiality to any or either of these parties, take the the examinations and depositions of all and every witness and
125 witnesses produced and examined, by virtue of the commission hereunto annexed, upon the interrogatories now, or which may hereafter, before the said commission is closed, be produced to and left with you by either of the parties. So help you God.

JOSHUA C. KNICKERBOCKER.

The above oath was administered by me this eighth day of March, in the year A. D. 1866, to Joshua C. Knickerbocker, commissioner within named.

Witness my hand and the seal of the court.

[SEAL.] THOS. B. CARTER,
Clerk of the Superior Court of Chicago, in Cook county, in the State of Illinois.

[U. S. 5-cent int. rev. stamp.]

Clerk's oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this case, take, write down, and transcribe the depositions of all and every the witness or witnesses produced before and examined by the commissioner, or of them named in the commission hereunto annexed, as far forth as you are directed and employed by the commissioner, or of them, to take, write down, and transcribe the said depositions, or any of them. So help you God.

126 In the Superior Court of Baltimore City.

Plaintiff's interrogatories.

RICHARD GREGG AND WILLIAM T. HUGHES
vs.
HENRY W. DRAKELY AND AARON FENTON.

Interrogatories to be propounded on behalf of the plaintiffs to witnesses in Chicago, Illinois.

To TIMOTHY LYNCH, ESQ.:

1st. Please state your age, residence, and occupation.

2nd. Do you know the parties to this cause? If yea, how long have you them? Are the plaintiffs partners in business? If yea, how long have they been so? Where, and in what business, have they been engaged, and what is and has been, since they became so, the name of their firm?

3rd. Are you in the employment of the plaintiffs? If yea, how long have you been so, and in what capacity?

4th. Do you know the firm of R. McCabe & Co.? If yea, who composes said firm? Who composed it in 1864 and 1865? Where, and in what business, is and was it, in the years 1864 and 1865, engaged?

5th. Do you know of any business transactions between the plaintiffs and said last-mentioned firm? If yea, when did they begin, and what are they?

6th. If, in reply to the last interrogatory, you say that the plaintiffs advanced any money to the said R. McCabe & Co., please
127 state when and how much they so advanced, and whether they advanced upon the personal credit of the said R. McCabe & Co., or upon an agreement that the latter were to transfer any property to the plaintiffs as security therefor. If you say that any advances of which you may speak were made under an agreement that McCabe & Co. to transfer any property to the plaintiffs as security therefor, please state what property they were so to transfer; how such transfer was to be effected, and whether anything, and if anything, what was done by McCabe & Co. for the purpose of vesting any property in the plaintiffs, in fulfilment of said agreement.

7th. If, in reply to the the last interrogatory, you say any money was advanced by the plaintiffs to R. McCabe & Co., under any agreement of which you may speak, state whether the same has been repaid or not; if not repaid in full, state how much thereof is now due the plaintiffs, and from what period the balance you may say is due them bears interest.

8th. If you speak of any property having been transferred by McCabe & Co. to the plaintiffs as security for advances, state whether any of said property was subsequently shipped to New York. If yea, in whose name it was so shipped and who received the proceeds thereof, and whether by agreement between McCabe & Co.
128 and the plaintiffs any of such property was shipped to Baltimore. If yea, when, to whom was it so shipped, under what agreement, and what became of the proceeds thereof. If you say the whole or any part of the proceeds thereof were received by the plaintiffs, please state whether any balance which you may, in answer to any proceeding interrogatory, say is due the plaintiffs, is so due them over and above the proceeds of said shipments, and of all other credits to which the said McCabe & Co. may be entitled. If you say any property which had been transferred by McCabe & Co. to the plaintiffs was shipped to Baltimore by agreement between them, please state whether, by said agreement, the plaintiffs released or retained their rights to any other property which had been, or was to be, transferred to them.

9th. Do you know anything about a shipment or consignment by railway of 983 tierces of hams made by the said R. McCabe & Co. to the defendants, on or about the 21st or 22d of January, 1865. If yea, to whom did said hams belong? Were they included in or recovered by any previous agreement between the plaintiffs and R. McCabe & Co., or any warehouse receipts, which had been endorsed by the latter to the former? If yea, annex said receipts to your answer, state, and in whose ware house or packing house, said hams were, when such receipts were given and endorsed, and ex-
129 plain how said receipts include or cover said property. State also whether said 983 tierces of hams were shipped with the knowledge or consent of the plaintiffs, and if, without their knowledge, when the plaintiffs first became aware thereof.

10th. Please state any other facts you may know which would benefit the plaintiffs as fully as if you were specially interrogated to them.

Interrogatories to be propounded to George C. Dorrington, Esq.

1st. Please state your age, residence, and occupation.

2nd. Do you know the parties to this cause? If yea, how long have you known them?

3rd. Were you, during the years 1864 and 1865, or any part thereof, in the employment of R. McCabe & Co.? If yea, please state who composed the firm of R. McCabe & Co.; in what business said firm was engaged; and in what capacity, and what time you were in the employment of said firm.

4th. Do you know anything about a shipment or consignment by railway of 983 tierces of hams made by R. McCabe & Co. to the defendants on or about the 21st or 22nd of January, 1865. If yea, state on what day or night of the week, and at what hour of said day or night said hams were packed and put aboard the cars, for the purpose of said shipment or consignment, and whether the
130 same was done with the knowledge or consent of the plaintiffs. Please also whether said hams were made from hogs slaughtered by R. McCabe & Co. or not; from what packing-house or warehouse they were so shipped or consigned, and whether any were so shipped or consigned from such packing-house or warehouse other than had been made by said R. McCabe & Co. from hogs slaughtered by them.

5th. Please state anything else you may know which would benefit the plaintiffs as fully as if you were herein specially interrogated in reference thereto.

WALLIS & THOMAS,
Att'ys for Plaintiffs.

True copy.
Test: ALFRED MACE, *Clerk.*

STATE OF ILLINOIS, *Cook County, City of Chicago, ss:*

At the execution of a commission issued out of the Superior Court of Baltimore city, in the State of Maryland, the 31st day of January, in the year of our Lord eighteen hundred and sixty-six, directed to Joshua C. Knickerbocker, esq., Chicago, Ill., empowering him to examine witnesses in a case pending in said courts between Richard Gregg and William T. Hughes, plaintiffs, and Henry W.
131 Drakely and Aaron Fenton, defendants, I, Joshua C. Knickerbocker, the commissioner in the said commission named by virtue thereof, having met this eighth day of March, in the year of our Lord eighteen hundred and sixty-six at my office, No. 14 Metropolitan block, in the City of Chicago, in Cook county, in the State of Illinois, and having taken the oath to the said commission annexed, proceeded to take the following depositions, to wit:

Timothy Lynch being first duly sworn in due form of law—

To the first interrogatory on the part of the plaintiff, he saith: My age is 41 years; Chicago, Illinois; book-keeper.

Answer to interrogatory 2d. I know the plaintiffs; I never saw the defendants. I have known the plaintiffs over fourteen years last past. The plaintiffs are partners in business. They have been partners since October first, 1864, in the city of Chicago, in Cook county, Illinois. In the commission business ever since the organization of their partnership the name of the firm has been, and now is Gregg & Hughes.

Answer to interrogatory 3. I am. I have been so since October first, 1864, as book-keeper.

Answer to interrogatory 4. Yes. Robert McCabe composed said firm in 1864 and 1865, in the pork-packing business.

132 Answer to interrogatory 4. Yes. The commenced November fifth, 1864. The plaintiffs advanced money to said firm to carry on the pork-packing business.

Answer to interrogatory 6th. They, the plaintiffs, advanced to said firm of R. McCabe & Co. from November fifth, 1864, to December twenty-third, 1864, the sum of four hundred and seventy-nine thousand seven hundred and thirty-one dollars and thirty-one cents. They did not advance it upon the personal credit of said R. McCabe & Co., but on hog products in store, for which ware-house receipts were given to and in favor of the plaintiffs, covering all the property in store, and vesting the ownership of such property in the plaintiffs in pursuance of a verbal agreement between the plaintiffs and said R. McCabe & Co.

Answer to interrogatory 7th. The money so advanced has not all been paid. There remains now due to the plaintiffs from said firm of R. McCabe & Co. the sum of sixty-six thousand and twenty-six dollars and ninety-nine cents with commissions and interest from January 1st, 1866.

Answer to interrogatory 8th. Several shipments were made to New York by McCabe & Co. for account of Gregg & Hughes, well understood and agreed upon by both parties. Gregg & Hughes
133 received the proceeds thereof, and had sole control of the goods. A shipment was made to Baltimore by agreement, and in the name of McCabe & Co., in the middle of January, 1865, on the 15 or 16 day. It was shipped to Drakely & Fenton, the defendants. McCabe & Co. paid in consideration of Gregg & Hughes' release of that shipment forty eight thousand two hundred and ninety dollars and three cents, part proceeds of drafts drawn by McCabe & Co. on Drakeley & Fenton, the defendants. The balance due from McCabe & Co. to plaintiffs, as stated in reply to interrogatory number seven, is due, over and above all credits to which McCabe & Co. are entitled. There was no waiver of title to the balance of the property held in store by McCabe & Co. for account of Gregg & Hughes after the last-above shipment was made. It still vested in Gregg & Hughes, as in their former claim and ownership.

Answer to interrogatory 9th. Yes; they belonged to Gregg & Hughes. They were covered by warehouse receipts for hog products and for hogs and their products, signed by R. McCabe & Co.

I here hand said receipts to the commissioner, nine in number,
134 to be affixed to this my deposition as exhibits. (I Joshua C. Knickerbocker, commissioner, here annex the said receipts handed to me by the witness, and make them exhibits, marked respectively A, B, C, D, E, F, G, H, and I of this deposition.—Joshua C. Knickerbocker, commissioner.) In the packing-house of R. McCabe & Co. Those receipts include five hundred and seventy tierces of hams, six thousand five hundred and ninety-nine hogs, the latter equal to eight hundred and twenty-five tierces, or thereabouts. Total, thirteen hundred and ninety-five tierces, or thereabouts; out of which there was shipped to New York over four hundred tierces by agreement, accounting for this shipment in

round numbers. The said 983 tierces of hams were shipped without the knowledge or consent of the plaintiffs. The plaintiffs first became aware of such shipment within twenty-four hours after the shipment.

Answer to interrogatory 10th. Robert McCabe shipped the said 983 tierces of hams wrongfully, and made all the amendments he could by passing the bills of lading over to Gregg and Hughes, endorsed by R. McCabe & Co. And further this deponent saith not.

TIMOTHY LYNCH.

Taken, subscribed, and sworn to before me this eighth day of March, A. D. 1866.

JOSHUA C. KNICKERBOCKER,
Commissioner.

[U. S. 5 cents rev. stamp.]

135 *Exhibit "A."*

CHICAGO, *November* 16, 1864.

Received in store at our packing-house, South Branch and Grove st., of Gregg & Hughes, two hundred and fifty barrels of mess pork, one hundred barrels extra prime pork, one hundred tierces sugar-pickled hams, and one hundred tierces prime lard, branded "R. McCabe & Co.," which we hold subject to their order, free of all charges on return of this receipt by them endorsed: Risk by fire excepted.

R. McCABE.

[25 cents rev. stamp.]

This is the receipt referred to by Timothy Lynch in his examination as the paper marked Exhibit "A."

JOSHUA C. KNICKERBOCKER,
Commissioner.

Exhibit "B."

CHICAGO, *Nov. 19th*, 1864.

Received in store at our packing-house, South Branch and Grove street, of Gregg & Hughes, two hundred barrels mess pork, fifty barrels prime mess pork, one hundred tierces prime lard, and one hundred tierces sweet-pickled hams, branded "R. McCabe & Co.," which we hold, free of charges and storage, subject to the order of said Gregg and Hughes on return of this receipt by them en-
136 dorsed: Risk by fire excepted.

R. McCABE & CO.

[25 cents rev. stamp.]

This is the receipt referred to by Timothy Lynch in his examination as the paper marked Exhibit "B."

JOSHUA C. KNICKERBOCKER,
Commissioner.

Exhibit "C."

Received in store at our packing-house, South Branch and Grove street, of Gregg & Hughes, which we hold subject to their order, on return of this receipt by them endorsed, the following described property, viz:

Eight hundred and fifty barrels mess pork, two hundred and fifty barrels prime and extra prime mess pork, one hundred and seventy tierces sweet-pickled hams, and one hundred and eighty tierces prime lard, all branded "R. McCabe & Co." Risk by fire excepted.

Chicago, Nov. 22, '64.

R. McCABE & CO.

[25 cents rev. stamp.]

This is the receipt referred to by Timothy Lynch in his examination as the paper marked Exhibit "C."

JOSHUA C. KNICKERBOCKER,
Commissioner.

Exhibit "D."

Received, Chicago, November 26, '64, in store at our packing-house, South Branch and Grove street, of Gregg & Hughes,
137 five hundred barrels mess pork, one hundred barrels prime mess pork, one hundred tierces sugar-cured hams, one hundred tierces prime lard, all branded "R. McCabe & Co.," subject to the order of said Gregg & Hughes, free of charges, on return of this receipt by them endorsed: Risk by fire excepted.

R. McCABE & CO.

[25 cents rev. stamp.]

This is the receipt referred to by Timothy Lynch in his examination as the paper marked Exhibit "D."

Exhibit "E."

CHICAGO, *November 19th*, 1864.

Received in store at our packing-house, South Branch and Grove street, of Mess. Gregg & Hughes, three hundred barrels mess pork, one hundred barrels prime mess pork, one hundred tierces prime lard, one hundred tierces sweet pickled hams, twenty-four thousand pounds pork shoulders in bulk, which we hold subject to the order of said Gregg & Hughes, free of charges, on return of this
138 receipt by them endorsed: Risk by fire excepted.

R. McCABE & CO.

B 1.

[25 cents rev. stamp.]

This is the receipt referred to by Timothy Lynch on his examination as the paper marked Exhibit "E."

JOSHUA C. KNICKERBOCKER,
Commissioner.

Exhibit "F."

Received in store at our packing-house, South Branch and Grove street, of Gregg & Hughes, seventeen hundred and sixty-one live hogs, weighing four hundred and thirty thousand seven hundred pounds, and sixty-eight dressed hogs, the whole valued at fifty thousand dollars, the product of which we hold subject to order of said Gregg & Hughes, free of all charges for killing, cutting, curing, and delivering packages, &c., on return of this receipt by them endorsed: Risk by fire excepted.

Chicago, Dec'r 10th, 1864.

R. McCABE & CO.

[Two $2 50 cents and one 10 cents rev. stamp.]

This is the receipt referred to by Timothy Lynch on his examination as the paper marked Exhibit "F."

JOSHUA C. KNICKERBOCKER,
Commissioner.

Exhibit "G."

Received in store at our packing-house, South Branch and
139 Grove street, of Gregg & Hughes, twenty-seven hundred and fifty-nine (2,759) live hogs, weighing six hundred and sixty-two thousand five hundred and fifty-seven pounds, the product of which we hold, free of all charges for killing, cutting, curing, packing, and delivering, subject to the order of said Gregg and Hughes, on return of this certificate or receipt by them endorsed: Risk by fire excepted.

Chicago, December 10th, 1864.

R. McCABE & CO.

[Two $2 50 and two $1 rev. stamps.]

This is the receipt referred to by Timothy Lynch on his examination as the paper marked Exhibit "G."

JOSHUA C. KNICKERBOCKER,
Commissioner.

Exhibit "H."

Received in store at our packing-house, South Branch and Grove street, of Gregg & Hughes, seven hundred and ninety live hogs, valued at twenty-three thousand dollars, the entire product of which we hold subject to the order of said Gregg and Hughes, free of all charges for killing, cutting, curing, packing, and delivering, on return of this receipt by them endorsed: Risk by fire excepted.

Chicago, Dec. 17th, 1864.

R. McCABE & CO.

[$2 50 Int. Rev. stamp.]

This is the receipt referred to by Timothy Lynch on his
140 examination as the paper marked Exhibit "H."

JOSHUA C. KNICKERBOCKER,
Commissioner.

Exhibit "I."

Received in store at our packing-house, South Branch and Grove street, of Gregg & Hughes, twelve hundred and eight live and thirteen dressed hogs, weighing three hundred and fifteen thousand one hundred and eighty pounds, the entire product of which we hold subject to the order or orders of said Gregg & Hughes hereon endorsed, free from all charges for killing, cutting, curing, packing, storing, and delivering: Risk by fire excepted.

Chicago, Dec. 15th, 1864.

R. McCABE & CO.

[One $2 50, one $1, and four 10 cts. rev. stamps.]

This is the receipt referred to by Timothy Lynch on his examination as the paper marked Exhibit "I."

JOSHUA C. KNICKERBOCKER,
Commissioner.

Deposition of George E. Dorrington.

George E. Dorrington, being first duly sworn in due form of law, to the first interrogatory on the part of the plaintiffs, he deposeth and saith: My age is twenty-four years past; Falls City, Richardson county, Nebraska Territory. My business is buying and raising stock cattle, hogs, horses, and other description of animals.

Answer to interrogatory 2d. I know the plaintiffs; I do
141 not know the defendants personally. I have known Mr. Hughes since 1861, and Mr. Gregg I have known since the year 1863.

Answer to interrogatory 3d. I was employed by R. McCabe & Co. as foreman of said firm from the fourteenth day of November, 1864, until the twenty-first day of January, 1865. I always understood the firm of R. McCabe & Co. was composed solely of Robert McCabe. The business of said firm was packing hogs and slaughtering hogs. I was the foreman of said firm.

Answer to interrogatory 4th. I know there was a shipment of that kind made by R. McCabe & Co. to the defendants on Sunday, January, 22d, 1865. It was in the forenoon of said Sunday when said hams were packed and put on board of the cars for the purpose of said shipment or consignment. It was not done with the knowledge or consent of the plaintiffs. The hams were made from hogs slaughtered by R. McCabe & Co. The hams were shipped from R. McCabe & Co. packing-house, situated on Grove street, near the intersection of Archer road, in the city of Chicago, in Cook county, Illinois. None were so shipped from said packing-house other than had been made by said R. McCabe & Co. from hogs slaughtered by them.

Answer to interrogatory 5th. I know of nothing further than I have above stated; and further deponent saith not.

GEORGE E. DORRINGTON.

142 Taken, subscribed, and sworn to before me this 8th day of March, A. D. 1866.

JOSHUA C. KNICKERBOCKER,
Commissioner.

[5-cts. U. S. rev. stamp.]

In witness whereof, I have hereunto set my hand and seal this eighth day of March, A. D. 1866.

[SEAL.] JOSHUA C. KNICKERBOCKER,
Commissioner.

[5-cent U. S. rev. stamp.]

The plaintiff, further to support the issue on their part, offered in evidence by Richard Gregg that he is one of the plaintiffs; that the hams spoken of in the correspondence belonged to the plaintiffs, and were forwarded to the defendants without the knowledge or consent of the plaintiffs; that Mr. Elliott was sent to Baltimore with instructions to get possession of the hams peaceably if he could, but by law if necessary. He took a letter of introduction to A. L. Webb & Co'y, as follows:

CHICAGO, *Feb'y 2d*, 1865.

Mess. A. L. WEBB & BRO., *Baltimore, Md.*

GENT: This letter will introduce to your acquaintance Mr. G. T Elliott, who visits your city for the purpose of attending to some business for Gregg & Hughes. He will explain to you the na-
143 ture of the business and may need your advice in the case, or may need some one to go on a bond as security; if so, I hope you will aid him all you can in this, or any other way he may need it. I will, of course, hold you harmless from any pecuniary risk in the matter, and will be under great obligations to you for any service you can render him.

Truly, your friend,

R. GREGG.

It was left optional with Elliot to take the hams out of the hands of defendants or leave them there. The object was to have the hams in the hands of defendants, or in the hands of some one else, for and as the property of the plaintiffs. The hams were worth about $40,000. McCabe & Co. were then, and are still, largely indebted to the plaintiffs—say from 68 to 70,000. And further, this witness stated that the pltffs. had warehouse receipts covering all the hog products mentioned in the correspondence; that they did not object to the shipment of the hams because McCabe & Company shipped them on Sunday, but because they were shipped without the knowledge and consent of the plaintiffs and in violation of the understanding between them and McCabe. The plaintiffs, on learning that the pork and shoulders had been shipped, and on being shown the letters of def'd'ts as to advances, consented that the pork and shoulders should go forward and be subject to the dr'fts of McCabe & Company, provided McC. & Co. would give them their proper share of the pro-

ceeds of the drafts, but no such agreement as regarded the
144 hams was made. The drafts were made in favor of the pl't'ffs, because McCabe & Company had no credit and could not otherwise get them discounted. The idea between McCabe & Company and ourselves was, that the order dated Feb'y 25, 1865, and referred to in plaintiff's letter of 27th February, 1865, covered the excess of the pork and shoulders over the drafts on them, while we had the entire interest in the proceeds of the hams.

On cross-examination, this witness stated that he furnished the means for the business of Gregg & Hughes, and that Mr. Hughes conducted the details of it. That he, witness, paid but little attention to the details; that, with one exception, Mr. Hughes conducted the correspondence offered in evidence on the part of the plaintiffs and signed Gregg & Hughes; that the firm of Gregg & Hughes held warehouse receipts for the pork and shoulders as well as for the hams that had been forwarded to the defendants; that the plaintiffs allowed McCabe to receive a portion of proceeds of the drafts made against the pork and shoulders, because the plaintiffs were not in advance on these specific products to the full amount of the drafts, and their idea was to get out of those shipments only the money they had in them. The pl't'ffs further to support the issue on their part, offered in evidence the testimony of George C. Elliott, who said that

he was in the employment of Gregg & Hughes at the date of
145 the transactions mentioned in the correspondence; that he came to Baltimore in February, 1865, instructed to see that the hams went into the hands of Drakely and Fenton for the account and as the property of no one but the pl't'ffs. Had no instructions about the pork and shoulders, except that McCabe & Com'y owed Gregg & Hughes, who would expect the excess; in other words what would, under all circumstances be coming to McCabe & Co'y. The instruc. of witness were, if the defendants would not consent to receive the hams on account of plaintiffs, and as their property, not to let them go into their hands at all, but to replevy them. Witness stated to defendants that witness came to Baltimore for the purpose of seeing that the hams went into the defendants hands as the property of the plaintiffs and not of McCabe & Co. Witness shewed them the warehouse receipts, and the defendants' were satisfied that the property belonged to the pl't'ffs, or ought to belong to them. Witness was determined to replevy the hams and made arrangements with Mess. A. L. Webb & Co. to give the proper bond in that case if necessary. The defendants said it was unnecessary to replevy the hams, and shewed no disposition to treat them otherwise than as the property of Gregg & Hughes, the pl't'ffs. The defendants promised that they would not treat with McCabe & Company in regard to the hams. It was finally arranged that pl't'ffs should pro-

cure an order from McCabe & Comp'y, or an assignment of
146 the bill of lading and send it to the defendants, who would then place the hams to the credit of the plaintiffs. That was required only because def'd'ts did not like to assume the responsibility of identifying the hams consigned with the products mentioned

in the warehouse receipts. The hams were not to go to any one's credit till the question was settled as to ownership by the order or assignment of b. l.; the hams were then to be placed on def'd'ts' books as pl't'ffs' property. There was no positive understanding about the pork and shoulders. Mr. Hughes gave witness instructions requiring witness to state to Drakely & Fenton that if there was a balance on the pork and shoulders the plaintiffs would claim it, as McCabe & Company would still owe them a balance. Not one word of suggestion was made by the defendants that they made any claim on the hams for previous advances. One such word would have put the hams out of their possession, or rather would have prevented the hams from going into the possession of the defendants. The witness had made arrange. with Webb & Brother to go on his replevin bond, if necessary, to protect the rights of the plaintiffs.

On cross-examination witness said that defendants agreed to hold the property till the plaintiffs could get McCabe & Co.'s order. Witness told defendants he would replevy the property, if necessary, to get possession of it. The understanding was that defendants
147 would not treat with McCabe; that plaintiffs were to get an order from him or an assignment of the bill of lading, send it to defendants, and the latter would place the hams to the credit of the plaintiffs. Witness told the defendants that he would replevy the hams if necessary. The hams were not to go to any one's credit till the question of ownership was settled. They were then to be carried on the books of Drakely & Fenton to the credit of Gregg & Hughes, as the property of Gregg & Hughes. There was no positive understanding about the pork and shoulders. Hughes, the plaintiff, gave the witness instructions to state to Drakely & Fenton that if there should be any balance coming to McCabe from the pork and shoulders the plaintiffs would claim it, as McCabe still owed them a balance, and witness communicated said instructions to the defendants. Witness communicated to plaintiffs by letter from Baltimore, and verbally on his return to Chicago, the result of his negotiations with the defendants.

On cross-examination witness said that the upshot of the conversation with Drakely & Fenton was, that they would do nothing until there was a settlement between the plaintiff and McCabe & Company, or until McCabe & Company had assigned the bills of lading to the plaintiffs, or given an order on the defendants.

The plaintiffs, further to support the issue on their part, offered in evidence of George L. Webb, of the firm of A. L. Webb & Company, who stated that on the arrival of Mr. Elliot in Baltimore, on the occasion in question, he came to witness and stated that his visit was especially intended to get hold of the hams in controversy;
148 that the said Elliott applied to witness to know if he would go security on a replevin bond for that purpose, should it become neeessary; that after Elliot had seen Drakely and Fenton, witness saw him, when he, Elliot, expressed himself satisfied with the result of his interview with Drakely & Fenton, and said that they acceded to his demand to hold the hams till some arrangement

was made to give the pl't'ffs control of the hams. The witness's recollection was that Elliott said he had accomplished entirely the object of his visit to secure the defendants the exclusive control of the hams. Nothing was said about the pork and shoulders.

The plaintiffs, further to support the issue on their part, offered in evidence the account current, marked No. 11, hereto annexed, showing the proceeds of the said hams, with the understanding the pl'ffs were not to be prejudiced by the account being headed in the name of McCabe & Co.

Account current.

Sales 983 tierces pickled hams for ac. Mess. R. McCabe & Co., Chicago, Ills.

1865.

Feb'y	27, 2 tierces pickled hams, 620 *a* 21		130 20
March	6, 3 tierces pickled hams, 900 *a* 21		189 00
"	6, 300 pieces smoked hams, sour, 4325 *a* 20		865 00
"	9, 100 pieces smoked hams, sour, 1456 *a* 20		291 20
"	9, 20 pieces smoked hams, damaged, 275 *a* 12		33 00
149			
March	13, 167 pieces smoked hams, sour, 2455 *a* 17		417 35
April	12, 1 tierce pickled hams, N. C R R, 280 *a* 20		56 00
"	17, 285 pieces smoked hams, 3691 *a* 20		738 20
"	20, 340 pieces smoked hams, 4093 *a* 20		818 60
"	22, 87 pieces smoked hams, 1524 *a* 20		304 80
"	24, 198 pieces smoked hams, 2515 *a* 19		477 85
"	25, 195 pieces smoked hams, 2495 *a* 19		474 05
May	2, 445 pieces smoked hams, 6266 *a* 19		1,190 54
"	2, 205 pieces smoked hams, damg'd, 3120 *a* 12		374 40
"	8, 264 pieces smoked hams, 3455 *a* 18½		639 17
"	9, 684 pieces smoked hams, 8864 *a* 19		1,684 16
"	10, 709 pieces smoked hams, 9642 *a* 18		1,735 56
"	10, 49 pieces smoked hams, dam'g'd, 790 *a* 12		94 80
"	12, 166 pieces smoked hams, 2371 *a* 18		426 78
"	13, 100 tierces pickled hams, 28829 *a* 18		5,189 22
"	16, 458 pieces smoked hams, 6154 *a* 19		1,169 26
"	18, 310 pieces smoked hams, 3862 *a* 19		733 78
"	19, 920 pieces smoked hams, 11819 *a* 18		2,127 42
"	22, 722 pieces smoked hams, 10475 *a* 18		1,885 50
"	22, 254 pieces smoked hams, dam'g'd 3896 *a* 10½		409 08
"	24, 234 pieces smoked hams, 2768 *a* 18½		512 08
"	26, 149 pieces smoked hams, dam'g'd 2089 *a* 10½		219 35
"	29, 337 pieces smoked hams, 4717 *a* 17		801 89
"	30, 289 pieces smoked hams, 3350 *a* 18		603 00
"	30, 305 pieces smoked hams, dam'g'd 4064 *a* 10		406 40
"	31, 404 pieces smoked hams, 5795 *a* 18		1,043 10
106 tierces and 8596 hams, am't forward			$26,040 74
May	31, 173 pieces smoked hams, sour, 2279 *a* 14		319 06

150

May	31, 47 pieces smoked hams, dam'g'd 660 *a* 11	72 60
June	2, 79 pieces smoked hams, sour, 1083 *a* 15	162 45
"	2, 453 pieces smoked hams, 5781 *a* 18	1,040 58
"	2, 52 pieces smoked hams, dam'g'd 785 *a* 10	78 50
"	3, 90 pieces smoked hams, 1146 *a* 17	194 82
"	3, 57 pieces smoked hams, dam'g'd 747 *a* 10	74 70
"	6, 33 pieces smoked hams, 414 *a* 18	74 52
"	6, 220 pieces smoked hams, dam'g'd 2454 *a* 8	228 32
"	12, 221 pieces smoked hams, 3078 *a* 19½	600 21
"	13, 157 pieces smoked hams, 2145 *a* 19	407 55
"	13, 197 pieces smoked hams, 2544 *a* 18	457 92
"	13, 185 pieces smoked hams, sour, 2770 *a* 13	360 10
"	14, 65 pieces smoked hams, dam'g'd 972 *a* 12½	121 50
"	14, 432 pieces smoked hams, 5936 *a* 19	1,127 84
"	19, 165 pieces smoked hams, 2078 *a* 21	436 38
"	19, 46, pieces smoked hams, sour, 713 *a* 16	114 08
"	19, 25 tierces pickled hams, 7103 *a* 17½	1,243 02
"	21, 269 pieces smoked hams, 3711 *a* 22	816 42
"	22, 39 pieces smoked hams, sour, 597 *a* 16	95 52
"	26, 450 pieces smoked hams, 6231 *a* 21	1,308 51
"	27, 544 pieces smoked hams, 7119 *a* 21¼	1,530 59
"	27, 93 pieces smoked hams, sour, 1432 *a* 15	214 80
July	1, 120 pieces smoked hams, 1706 *a* 22	375 32
"	3, 105 pieces smoked hams, sour, 1528 *a* 15	229 20
"	3, 482 pieces smoked hams, 6705 *a* 21	1,408 05
"	5, 169 tierces pickled hams, 47261 *a* 20	9,452 20
297 tierces and 13,370 pieces. Due 30 June, 1865		$48,585 50

151 *Charges.*

1865.

March 9,	Freight, $6,392 82; drayage, $185 25	$6,578 07	
	3 mo's and 21 d'ys interest on above,	121 69	
	Drayage to and from smoke-house,	245 00	
	Overhauling, resalting, salt, and use of ice-house, $1 per tierce	982 00	
	Smoking 13,370 hams, at 4 c. ea.	534 80	
	Commission, 5 p. c. on $48,585 50	2,429 28	
			$10,890 84
Net proceeds, due June 30, 1865			$37,694 66

Baltimore, July 25, 1865.

DRAKELY & FENTON.
By LOUIS DUNAN.

It was then admitted by the counsel for the defendants that the plaintiff's composed the firm of Gregg & Hughes, the defendant's that of Drakely & Fenton, and R. McCabe that of McCabe & Comp-

any, and that at the time the two drafts of R. McCabe & Company were drawn, as well as at the time of Elliott's visit to Baltimore, the pork and shoulders furnished full security for said drafts.

The defendants, to support the issue on their part, in addition to the evidence contained in the correspondence, offered in evidence the testimony of Henry W. Drakely, one of the defendants, who stated, in regard to the visit of Mr. Elliott, that on his arrival in Baltimore he claimed from defendants everything that had been consigned to them by McCabe & Company. The hams had
152 not then arrived. Elliott wanted the defendants to receive the property as the property of the pl'ffs. The defendants refused, and gave as reasons that the property had come to them as the property of McCabe & Company; that the warehouse receipts which he, Elliott, presented might refer to other hog products than those of the pl't'ffs. The defendants told Elliott they had declined making McCabe & Company advances because of the advices of the pl't'ffs; that they, defendants, believed from what McCabe had said that satisfactory arrangements would be made with him, and they, def'ts, would not make advances to McCabe & Co. until the p't'ffs had time to substantiate their title to the property. In due time the defendants got an order from McCabe & Co. in favor the pl't'ffs, dated February 25, 1865, which was accepted on the 7th March. They also received the letter of the 27th Feb'y 1865, with the memorandum showing what the order covered.

While Elliott was with the def'ts he made no difference on his claim to any portion of the property. He claimed it all, and the witness thinks he did not think Elliott claimed it for any other purpose than for the purpose of preventing advances of money to McCabe, which the defendants agreed not to make.

On cross-examination witness stated that he did not think Elliott claimed possession of the hams for the pl't'ffs unless defendants should refuse to protect their rights by not advancing on them to McCabe, which defendants readily agreed not to do, believing it
153 due to the plaintiffs. The arrangement thus made was a temporary one.

Joel Hinman, examined on the part of the defendants, stated that the visit of Elliott was in relation to the hams, and Elliott showed warehouse receipts covering McCabe's entire business, and stated he wanted to have Gregg and Hughes in the hams secured. He claimed the entire shipments that had been made by McCabe & Co. And the defendants agreed to make no advances and to wait for an assignment of the bills of lading or an order from McCabe & Company as an assurance that the plaintiffs did own the hams. No difference was made in regard to the several shipments, except that the pork and shoulders had been advanced on and the hams had not been. But the plaintiffs, through Mr. Elliott, claimed all the pork products alike by virtue of the warehouse receipts.

Whereupon the plaintiffs, by their counsel, prayed the court to instruct the jury as follows:

No. 1. If the jury believe from the evidence that prior to the ship-

ment of the hams to Baltimore, the plaintiffs held the warehouse receipts which have been offered in evidence for the consideration proven by the witnesses Lynch and Hughes, and that said warehouse receipts covered said hams, and that the said hams were shipped by McCabe & Co., to the defendants without the knowledge or consent of the plaintiffs and that the defendants, before receiving said hams, received the telegram and letter of the plaintiff's of January 22d, and that McCabe & Co. subsequently gave to the plaintiffs the order on the defendants, dated 25th February, 1865, which was accepted by the defendants, and also assigned to them the bill of lading for said hams, then the plaintiff's are entitled to recover the net proceeds of said hams, less only the $10,000 and interest thereon advanced at their request by the defendants, and expenses without any deduction on account of the advances made by the defendants on the drafts of McCabe & Co.

154

No. 2. That said correspondence which has been offered in evidence shows that the drafts drawn by McCabe & Co. were not drawn against the hams, or on the faith or security of their future shipment, but against the pork and shoulders only.

No. 3. That the said correspondence contains no agreement which bound McCabe & Co. to ship to the defendants the hams in controversy.

No. 4. That the advances made by the defendants on he two drafts drawn by McCabe & Co. were made to the letter, and the fact of the plaintiffs receiving a portion of the net proceeds thereof did not make the plaintiffs the debtors of the defendants therefor.

No. 5. That the plaintiffs, by receiving a portion of the proceeds of the drafts drawn by McCabe & Co., acquiesced in a lien on the pork and shoulders therefor, but did not render themselves or their hams responsible therefor to the defendants.

155

No. 6. That the plaintiffs letter of the 27th February did not, in law, make the hams liable for the advances previously made on the drafts of McCabe & Co.

No. 7. That there is no evidence in the correspondence of any agreement binding the plaintiffs to allow the defendants to deduct from the proceeds of the hams any balance which might be or become due the defendants from McCabe & Co. for previous advances.

No. 8. If the jury believe that the hams were shipped to the defendants without the knowledge or assent of the plaintiffs, and were, when so shipped, the property of the plaintiffs, then the said hams are not liable for the advances made by the defendants to McCabe and Company.

No. 9. It being admitted that the plaintiffs were the legal owners of the hams at the time they were shipped by McCabe & Co., and that the defendants received the plaintiffs' telegram and letter of January 22nd before they received said hams, without any deduction on account of the advances made by the defendants on the drafts of McCabe & Co.

156 And the defendants prayed the court to instruct the jury as follows:

1. If the jury shall believe from the evidence that R. McCabe & Co., being indebted to the plaintiffs for advances on pork products, gave them as security w'house receipts for the property of that description specified in the memorandum accompanying the letter of the 27th Feb'y, 1865, that has been offered in evidence, the said McCabe & Co. retaining the actual possession of the said property, then such warehouse receipts gave to the plaintiffs the right to hold said property as security for said advances according to the agreement between the parties, the effect of said warehouse receipts being to make the plaintiffs the owner in the law of the said property.

2. If the jury shall further believe that the said McCabe & Co., so being in the actual possession of the said property, made the two several consignments of the 16th and 17th January, 1865, which have been offered in evidence, in their own name and without the knowledge of the plaintiffs, to the defendants, who received the same, and that the plaintiffs when informed of said consignments made no serious objection, and that the plaintiffs were shown the letter of the 10th January, 1865, offered in evidence, wherein the defendants agreed to make the advances therein specified, and that the plaintiff's received from said R. McCabe & Co. drafts drawn by
157 them in favor of the plaintiffs for the advances specified in said letter on the said two consignments, and collected or had discounted the same, and that subsequently the said McCabe and Company, in like manner, without the knowledge of the plaintiffs, consigned to the defendants the 983 tierces of hams specified in the memorandum of the 27th February aforesaid, which were received by the defendants, and that the plaintiffs subsequently procured from the said R. McCabe & Company and gave to the defendants the order dated 25th February, which has been offered in evidence, requiring the defendants to place the proceeds of all the pork products consigned to them by the said R. McCabe and Co., to the credit of the plaintiffs, and that the plaintiffs subsequently received from the defendants the advance of $10,000 in evidence, and that the plaintiffs subsequently in their intercourse with the defendants treated the said three consignments as on the same footing, and dealt with them as though they occupied in regard thereto the place of owners of all of them, exercising the control of owners in advising and directing the disposition thereof without discrimination between the said three consignments, until after they received the letter of the defendants of the 8th of May, 1865, in evidence, in reply to the letter of enquiry of the 3d May, also in evidence, stating that the net balance of all the consignments, at the then market rates, would about $10,000, then these facts, if found by the jury, leave them at liberty to infer that the relations existing between the plain-
158 tiff's and the defendants in regard to all those consignments were those of principal and factor, if not at the date of the said consignments respectively yet as a consequence of the subse-

quent intercourse between the plaintiffs and defendants in relation thereto, in which event the defendants would be entitled to retain the amount of their advances with interest thereon out of the net proceeds of all said consignments; and the verdict of the jury, if for the plaintiffs, must be for such balance only as they may find to remain in the defendants hands after deducting the advances aforesaid.

3. If the jury shall believe from the whole of the evidence in the cause that the plaintiffs were the owners of the property described in the memorandum attached to the letter of the 27th January, 1865, and that the same was referred to in the order, in evidence, of the 25th February, 1865, and although they may have been ignorant at the time of each consignment of the several portions of said property of the fact that it was being made to the defendants, yet if the jury shall believe that the plaintiffs subsequently recognized and acquiesced in such consignment and received advances thereon, as well as the hams as pork and shoulders, and assumed and exercised the control of owners of all the said property, without discrimination, then there is evidence from which the jury may infer that the
159 relation of principal and factor was established with regard to the whole of the consignment, offered in evidence, pork, shoulders, and hams, in which event the defendants would be authorized to retain from the net proceeds of said consignments the amount of their advances with interest, and the verdict must be for such sum only as remains after deducting said advances from the net proceeds aforesaid.

4. If the jury find that the pork, shoulders, and hams shipped by McCabe & Co. to Drakely & Fenton were the property of the plaintiffs, and that it was agreed between the plaintiffs and McCabe & Co. that the pork and shoulders should be shipped in the name of the plaintiffs to Drakely & Fenton, and the advances made on such shipments should be by drafts on Drakely & Fenton in favor of the the plaintiffs; and if the jury shall further find, that after the plaintiffs discovered that the pork and shoulders had been shipped to Drakely & Fenton in the name of McCabe & Co., they (the plaintiffs) claimed and received the drafts for the advances thereon, drawn in their favor on Drakely & Fenton, and that said drafts were paid by Drakely & Fenton, then that the amount of said advances, with interest, must be deducted from any moneys of the plaintiffs which the jury may find in the hands of the defendants.

160 5. And that if the jury believe from the evidence that the assignment of the bill of lading, which has been offered in evidence, was ante-dated, and that the true date was not the 25th of February, then the jury can only regard such assignment as of the date when it was actually executed.

Both which sets of instructions the court refused to give, (except the 1st and 5th prayers of the defendants, both of which were conceded by pl'ffs, and granted by the court,) but instructed the jury as follows:

Court's instructions.

If the jury shall find from the evidence in this case that the pork and shoulders were shipped to defendants for sale by McCabe & Co. as their own property, without the knowledge and consent of plaintiffs, and that McCabe & Co. drew on defendants for the amount of advance agreed to be made by them on said shipments; that the plaintiffs, on learning of the same, did not object to the said shipment, but received and negotiated for McCabe & Co. the drafts drawn by them on defendants for the advance, and received and credited said McCabe with a part of the same, and paid the balance to said McCabe & Co., and that they agreed that plaintiffs should receive any balance that might remain from the sales of the pork and
161 shoulders, after deducting said advances, expenses, &c.; and shall further find that McCabe & Co. shipped the hams to defendants without the knowledge and consent of the plaintiffs, but before they reached defendants, they were notified by the plaintiffs that the said hams belonged to them, and could only be received as their property, and if after said notification defendants received and sold said hams; and if the jury shall further find, that at the time when said hams were shipped to, received, and sold said defendants, the plaintiffs held the legal title of the same, by virtue of the warehouse receipts held by them, then the plaintiffs are entitled to recover in this suit, the proceeds of the sales of the said hams, after deducting the expenses and usual commissions and advances made on the same by the defendants to the plaintiffs.

And the court stated to the jury that the fact upon which the instructions were founded being admitted, the jury must find for the plaintiff, which verbal statement was not objected to by the defendants.

To which refusal of the court to grant the instructions and each of them prayed for on the part of the defendants, by their counsel, prayed leave to except, as well as to the wrirten instructions
162 given by the court to the jury, and that the court would sign their bill of exceptions, which is accordingly done this 12th day of April, 1867.

[SEAL.] WILLIAM F. GILES.

And now here, at this day, to wit, the twentieth day of April, in the year of our Lord one thousand eight hundred and sixty-seven, the said Henry W. Drakely, Aaron Fenton, and Joel Hinman, produced to the said Circuit Court here the writ of the said United States of America for correcting of errors of and upon the premises, commanding the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next; which said writ of error is in the words and of the tenor following, to wit:

163 THE UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the Circuit Court of the United States for the fourth circuit, in and for the Maryland district, greeting:

Because in the record and proceedings, as also in the rendition of the judgment in a plea, which is in the said court before you between Richard Gregg and William T. Hughes, plaintiffs, and Henry W. Drakely, Aaron Fenton, and Joel Hinman, defendants, a manifest error hath happened to the great damage of the said defendants, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the first Monday in December next, in the said Supreme Court then and there to be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable S. P. Chase, Chief Justice of our
164 Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-six.

Issued the 20th day of April, A. D. 1867.

[L. S.] JAMES W. CHEW,
Cl'k Circuit Court.

165 In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, the transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating thereto, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

Writ of error bond.

Know all men by these presents, that we, Henry W. Drakely, Aaron Fenton, Joel Hinman, Chauncy Brooks, and Edward Kemberly, are held and firmly bound unto Richard Gregg and William T. Hughes in the just and full sum of sixty-one thousand dollars, lawful money, to be paid to the said Richard Gregg and William T. Hughes, their heirs, executors, administrators, or assigns, to the payment whereof, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this twentieth day of April, in the year of our Lord one thousand eight hundred and thirty-seven.

Whereas the said Richard Gregg and William T. Hughes did

obtain a judgment against Henry W. Drakely, Aaron Fenton, and Joel Hinman in the Circuit Court of the United States for the fourth circuit, in and for the Maryland district, at the April term
166 thereof, in the year of our Lord one thousand eight hundred and sixty-seven, for the sum of thirty thousand four hundred and fifty-one dollars and sixty-seven cents, from which judgment the said Henry W. Drakely, Aaron Fenton, and Joel Hinman have sued out a writ of error, returnable to the next term of the Supreme Court of the United States:

Now, the condition of the obligation is such, that if the said defendants shall not cause a transcript of the record and proceedings of the said Circuit Court to be transmitted to the said Supreme Court within the time appointed by law, and prosecute the said writ of error with effect, and also satisfy and pay the said Richard Gregg and William T. Hughes, their heirs, executors, administrators, or assigns, in case the said judgment shall be affirmed, the debt and damages adjudged in the Circuit Court aforesaid, as also the debt and damages that may be awarded in the said Supreme Court, then the said bond to be and remain in full force and virtue, otherwise of no effect.

[SEAL.] HENRY W. DKAKELY.
[SEAL.] A. FENTON.
[SEAL.] JOEL HINMAN.
[SEAL.] CHAUNCEY BROOKS.
[SEAL.] EDW'D KIMBERLY.

Signed, sealed and delivered in presence of—
LOUIS DUNAN.
DERICH FANESTOCK.
CHAS. W. VIRTUE.

Endorsed: "Bond approved 20 April, 1867." "William F. Giles."

167 The United States of America to Richard Gregg and William T. Hughes, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the fourth circuit, in and for the Maryland district, wherein Henry W. Drakely, Aaron Fenton, and Joel Hinman are plaintiffs in error and you are defendants in error, to shew cause, if any there be, why the judgment rendered against the said Henry W. Drakely, Aaron Fenton, and Joel Hinman, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand and seal this 20th day of April, in the year one thousand eight hundred and sixty-seven.

[SEAL.] WILLIAM F. GILES.

I acknowledge notice of the above citation.

WALLIS & THOMAS,
Att's for Gregg & Hughes.

168 In testimony that the aforegoing is a true copy taken from the record and proceedings of the Circuit Court aforesaid, I hereunto subscribe my name and affix the seal of the said Circuit Court this second day of August, in the year of our Lord one thousand eight hundred and sixty seven.

JAMES W. CHEW.
Clerk Circuit Court.

[5-cent int. rev. stamp cancelled.]

IN THE
Supreme Court of the United States.

DRAKELY AND FENTON

vs.

GREGG AND HUGHES.

In Error to the Circuit Court of the United States for the District of Maryland.

THE main question, in this case, is the right of the Plaintiffs in Error, the Defendants, below, to a lien for their general balance, as commission merchants, on the proceeds of two consignments of certain pork products from a party having the equitable interest therein, without the knowledge of the holders of the legal title—the Defendants in Error. The assent of the latter was given to the first shipment when informed of it; and they received the proceeds on the drafts of the consignor to their order. The last consignment being without their knowledge, under circumstances making them distrustful, they notified the consignees to make no further advances to the consignors, claiming, at the same time, to be, virtually and legally, the owners of both consignments. They, the Defendants in Error, afterwards obtained from the consignors an order, which was accepted by the consignees, requiring them to place the proceeds of all the property to their credit. After this, they dealt with the two consignments as owners thereof, substituting themselves in the place of the original consignors.

The Court below, in its instructions to the jury, ignored the facts relied upon by the Plaintiffs in Error, to prove the substitution and establish their right to a lien on all the pork products

consigned to them. If these facts were not irrelevant—if, in point of law, they were material to the decision of the question of lien, the instruction of the Court below was erroneous. It therefore becomes necessary to examine in some detail the proof in the cause, so that its character and legal effect may be fully seen by this Court.

R. McCabe and Company were Pork Packers in Chicago. Gregg and Hughes, the Defendants in Error, were merchants who made advances to R. McCabe and Company on Pork Products, taking from them, as security, the warehouse receipts, covering all the property in question here, and which, it is conceded, gave Gregg and Hughes the legal title to the property described in them.

These being the relations between R. McCabe and Company and Gregg and Hughes, the former address to the Plaintiffs in Error, Drakely and Fenton, on the 6th January, 1865, the following letter: (p. 4.)

CHICAGO, ILL., January 6, 1865.

Messrs. Drakely and Fenton, Baltimore, Md.

Dear Sirs—I have about one thousand tierces of sweet pickled hams and five hundred tierces of pickled shoulders, with some mess, prime mess and extra prime, which I would like to send to you, provided you think you could sell for good prices. Please let me know what you could get for the above, to arrive, and what amount you would allow me to draw on the shipment.

The sales you made for McCabe and Hughes were all satisfactory. Mr. H. has retired, and I have taken my sons in the house. The hog crop will be short one million.

Yours, truly, R. MCCABE & COMPANY.

The property here referred to, pork, shoulders and hams was, all of it, at the date of the letter, the property of Gregg and Hughes by virtue of the warehouse receipts already mentioned—and on the 10th January Drakely and Fenton reply to it as follows: p. 4.

BALTIMORE, January 10, 1865.

Messrs. R. McCabe & Co. Chicago, Illinois:

Gentlemen—Yours of 6th instant came to hand this morning and contents noted. Our market is quite firm for provisions, and the general impression is that the demand will be greater and prices will advance. We quote prices for to-day as follows: S. C. hams in pickle, 21 cts. to 22½ cts.; do. shoulders, 18 cts.

to 18½ cts.; P. M. pork, $41 to $42; mess, $42½ to $43; leaf lard 24 to 24½ cts. We would be pleased to receive consignments from you, and would advance you as follows on sight drafts, accompanied with bills of lading: on pickled hams, say $40 per tierce; do. shoulders $30 per tierce; mess pork $30 per barrel; P. M. pork $25 per barrel. Should you favor us with shipments we will use our best endeavors to obtain for you the highest market prices.

Hoping to hear from you soon,

We are, very respectfully, yours,

DRAKELY AND FENTON,
By LOUIS DUNAN.

P. S.—We have no doubt we could make quick sales soon afterward.

The present litigation has reference, mainly, to 983 of the 1,000 tierces of hams, the first mentioned article in both of the foregoing letters; though in considering the questions to be decided here, it is to be remembered that the legal title to all the property—hams, shoulders and pork—was in Gregg and Hughes.

Satisfied, apparently, with the terms of Drakely and Fenton, R. McCabe and Company write the following letter on the 13th January, 1865, p. 5:

CHICAGO, ILL., January 13, 1865.

Messrs. Drakely and Fenton, Baltimore, Md.

Dear Sirs—Yours of 10th is before me and contents noted. I will ship to you by the 16th, fifteen hundred barrels pork, and probably will ship one thousand tierces of hams and six hundred tierces of shoulders next week. I have about five hundred tierces prime lard, probably I may ship that, too. I will draw on the fifteen hundred barrels on the 16th, as directed by you, for about $42,000. I will write fully on that day.

Truly, yours, R. MCCABE AND COMPANY.

Drakely and Fenton reply to this letter on the 18th January, advising of a fall in prices, and suggesting that in shipping the hams and shoulders, a small lot of each should be sent forward so that there might be "a sample" for examination before making any considerable advances.

On the 16th of January R. McCabe and Company forwarded the pork described in the letters of that date, of which the following is an extract, p. 6:

"On which (the items enumerated) I have drawn on you to the order of Gregg and Hughes for $41,000. I will ship to order about six hundred tierces of shoulders, and on Thursday I will ship the hams. I hope you will put the property in store on arrival until I come on, which will be in February."

On tho 17th January, R. McCabe and Company write again to Drakely and Fenton, informing them of a shipment of "six hundred and three tierces of shoulders," and saying "I will ship the hams next week if I can get cars." (p. 6.)

The bill of lading for the nine hundred and eighty-three tierces of hams is dated January 23d, 1865—which was Tuesday; but the hams appear to have been forwarded, in fact, on Sunday; and on Monday, 22d, Gregg and Hughes telegraph Drakely and Fenton as follows: (p. 6.)

CHICAGO, ILL., January 22, 1865.

Drakely and Fenton—Don't negotiate bill lading for nine hundred and eighty-three tierces of hams shipped yesterday by McCabe and Company, consigned to you; hams belong to us. Particulars by mail. Answer.

GREGG AND HUGHES.

This was the first intimation that Drakely and Fenton had, of Gregg and Hughes' interest, in the property mentioned in the original letter of R. McCabe and Company of January 6, or any part of it. They acknowledged the telegram January 24, 1865: The letter promised by the telegram—and of the same date—followed in due course. (pp. 6, 7, 8.)

CHICAGO, January 22, 1865.

Messrs. Drakely and Fenton, Baltimore, Md.

Gentlemen—We have been advancing large sums of money during the past winter to R. McCabe and Company, of this city, to pack pork with, and have been getting from them their warehouse receipts with policy of insurance covering the same security. We have been shipping the property to New York on B L in our name, where it was held for our account. *Some few days ago, Col. McCabe, of the firm named, handed us a letter from your house authorizing them to make sight drafts on you on the basis of certain figures, therein named, the drafts to be accompanied by B L.* These shipments they made without our knowledge in their own name, *and gave us only a portion of the procceds of the Drafts made on you, payable to our order, viz: one for* $41,000 *and another for*

$18,000. TO THIS WE DID NOT MAKE ANY SERIOUS OBJECTION, as they had been cutting a few hogs with money obtained from another source, and we presumed they wanted to close that account. There was still a considerable quantity of lard and hams remaining here, which we supposed was sufficient to secure us for our advances here in addition to what we had in New York. Subsequently they shipped the lard to you on their own account, for which we got nothing yet. Col. McCabe, however, told us that we should have the benefit of anything that might be in your hands from the sale of the property shipped you on B L in the name of McCabe and Co., the lard included, after your advances and charges were paid. *We were satisfied with that arrangement, and on Friday last proposed that we would ship to you in a few days the hams that were still here, there being then about a thousand tierces in which we were interested, and we would not draw anything upon them until they were sold.* Col. McCabe told us at that time he would leave on Saturday morning for New York, *and we were to attend to the shipping of the hams ourself.* To our surprise this morning (Monday) we found that McCabe did not go to New York as contemplated, but remained here and shipped the hams himself to your house on yesterday (Sunday), and this morning left for your city himself. Now the last move to us does not look right, and we are not satisfied with it. We consequently write to you *all the facts* in connection with our dealings with McCabe and Company, and will deem it an especial favor *if you will hold off making further advances to them over and above the* $41,000 *and* $18,000 *sight drafts drawn in our favor. The property shipped you is virtually and legally ours, and we hold McCabe's warehouse receipts for it.* If you will delay the payment of anything further to McCabe and Company until we can advise with them and direct the property to be placed with you for our account, we will feel very grateful to you; and if they refuse to comply with our request we can then take steps to make them surrender the property or reimburse us for our advances. * * * * *

We do not wish your interests in the matter to be impaired in the least; we want you to sell all the property consigned to you; but we do not want the proceeds paid over to McCabe and Company until we are secured, nor do we want any sale for the future made unless the sales are placed to our credit. McCabe and Company may have the very best intentions in this matter, and we hope they have, but the course pursued is not exactly as we would have done, and we think very strange of McCabe and Company for having moved *property belonging to us without our consent.* We desire that

they shall have the benefit of everything, *the pork, lard, shoulders and hams bring over the amount* we have in them. * * * *

Yours, GREGG & HUGHES.

This letter is important, and may be dwelt upon before going further. It is the statement by Gregg and Hughes, of "*all the facts.*"

It admits, in the first place, that they held warehouse receipts for *all* the property that had been consigned to Drakely and Fenton—that their title to the hams was no better than their title to the pork and shoulders—but the same.

It admits, that they saw the letter by which Drakely and Fenton agreed to make advances.

It admits, that the advances on the first consignments, made, to use their own language, "on the basis of certain figures named" in Drakely and Fenton's letter of the 10th of January, were in drafts to their own order—a part of the proceeds of which they gave to R. McCabe & Company, to enable them to close an account with other parties.

It admits, that, although the first consignment of the property of Gregg & Hughes, was made without authority by R. McCabe and Company, yet, that they made "no serious objections to it;" in other words, that they ratified it, and received the proceeds of it, availing themselves of the act of R. McCabe and Company as their agents in the premises.

It admits, that (with a knowledge of the letter of Drakely and Fenton of February 16, 1865), they proposed to send to them—the same consignees that McCabe and Company had employed—the property, which, but for the negotiation opened by R. McCabe and Company letters of January 6th; and which alone introduced Drakely and Fenton into the transaction,—would have been sent to New York.

In this letter Gregg and Hughes propose, in fact, to place themselves in the shoes of R. McCabe and Company as regards the property consigned by them to Drakely and Fenton, pork, shoulders and hams; and, although they say, they had *not* proposed to draw, had they themselves made the shipment of the hams, until they were sold,—yet, they did obtain advances on them, as will be seen presently, from the correspondence,—making a reference, at the time, to the letter of Drakely & Fenton of the 10th of January, which was "the basis" of the transaction.

In this letter, too, they set up this title, which is not disputed, to *the whole*, by virtue of their warehouse receipts.

They claim in it, also, the proceeds —not of the hams only—but of *all* the pork products consigned by R. McCabe and Company to Drakely and Fenton.

"We want you," they say, "to sell *all* the property consigned to you, * * * * * nor do we want any sales for the future made, unless the proceeds are placed to our credit." And, further, they say, "we desire that McCabe and Company shall have the benefit of everything, *the pork, shoulders and hams* bring over the amount we have in them."

The same letter admits that it was McCabe's conduct, in forwarding the hams, that created distrust, and produced their telegram and letter of January 22d.

These admissions, the Plaintiffs in error contend, would alone prove the transaction to have been one, where the owners of property, after permitting an agent to establish in his own name relations with a third party—or, which is the same thing, not objecting to those relations when he learns they have been established, but availing himself of them,— becomes dissatisfied, discloses his ownership, and takes upon himself the further conduct of the business.

Nor is it an answer to the above view of the case to say, that although *all* the property was, in fact, consigned by R. McCabe and Company to Drakely and Fenton, yet that the telegram of the 22d January gave the consignees notice of the ownership of the hams. Had Gregg and Hughes not been the owners, as well, of the pork and shoulders, on which they had already received the advances, —had they not previously assented to the act of R. McCabe and Company in forwarding the pork and shoulders so belonging to them—the argument based on the telegram would be stronger. It loses all force, however, when the facts become known, as they are exhibited in the letter of the 22d of January, written to explain the telegram.

Paraphrased, this letter is as follows:—R. McCabe and Company sent you our property without our knowledge; when they informed us of the fact, shewed us your letter, and drew drafts for the advance you had agreed to make, payable to our order, we made no objection; and proposed ourselves to send you the balance of the property which they had promised. Finding however, that they had themselves forwarded it, we distrust them, and while we sanction and adopt the selection of your firm *as the consignees of all the property*, we give you notice of *our title to all the property* and request you to hold off making further advances to McCabe and Company.

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Upon the letter of the 22d January alone, the Plaintiffs in error would contend, that it amounted to a substitution of Gregg and Hughes in place of R. McCabe and Company, in regard to all the property consigned to Drakely and Fenton; giving to the latter, as against Gregg and Hughes, the same right to retain for their general balance that they would have had, had the transaction been with R. McCabe and Company throughout.

In other words, they contend, that the case is one, in which the principal, intervening in a transaction between his agent and a factor, has recognized their relations and proceeded to carry them out.

That, in such a case, the factor would have a lien for his general balance is so clear, that the point need not be discussed.

The main question, then, is one of fact. Did Gregg and Hughes recognize the relation of principal and factor established between R. McCabe and Company and Drakely and Fenton by the correspondence and acts of the parties respectively, and assume the obligations thereby created in regard to *all* the property, pork, shoulders and hams, consigned by the former to the latter? The Plaintiffs in error will now proceed to show, that there was such a recognition and assumption.

R. McCabe and Company's letter of the 6th January, proposed to forward *pork, shoulders and hams*, mentioning the quantities, and enquiring about advances.

Drakely and Fenton's letter of 10th January states what advances will be made.

R. McCabe & Company, January 13, 1865, advise that shipments will be made accordingly, on the 16th, of the Pork; and that the hams and shoulders will go forward the next week.

The pork and shoulders go forward accordingly, and drafts amounting to $59,000 are paid.

The hams are forwarded also, as promised, *by the same parties*, on the 21st January, with a bill of lading dated the 23d. (p. 61.)

Gregg & Hughes intervene on the 22nd. Had they not intervened, there would have been no question as to the right of Drakely & Fenton to a lien for their general balance.

Their letter of 22nd January is a portion of the evidence relied on, to show that this intervention was but the substitution of a principal in place of an agent in dealings with a factor.

Was there a reason for such a substitution?

Touching *all* the property, pork, shoulders and hams, R. McCabe & Company were but agents dealing with the property of their principal, whose absolute title was the warehouse receipts.

The conduct of the agents exciting distrust, there was a reason why the principal should substitute himself in their place.

How does the letter of 22nd January bear upon this question of substitution? See the following extracts:

"The property shipped you is virtually and legally ours, and we hold McCabe & Company's warehouse receipts for it."

"If you will delay the payment of anything further to McCabe & Company until we can advise with them and ask them to *direct the property* to be placed with you for our account, we will feel very grateful to you."

"We want you to sell *all the property* consigned to you, but we do not want the proceeds paid over to McCabe & Company, until we are secured; *nor do we want any sale for the future made unless the proceeds are to be placed to our credit.*"

From the use of the words *all of the property*, it would be fair to argue that not only the hams, the consignment of which was the occasion of the letter of the 22nd, but the pork and shoulders were meant. The next sentence, however, removes all doubt on this score.

"We desire that they shall have the benefit of everything, *the pork, lard, shoulders and hams*, bring over the amount we have on them."

Here then was a setting up of ownership of *all* the property, assuming the control of *all* of it.

We look, next, to the subsequent correspondence, to corroborate this view—to show that Gregg & Hughes stepped into the place of R. McCabe & Co., in *all* respects as regards *all* the property.

On the 31st January, 1865, Gregg & Hughes write: "We have in our former letter notified you that the property consigned to you by R McCabe & Co., of this city, belongs to us. We again notify you that *all the pork products* shipped to you by McCabe & Co., is ours, and you must not negotiate for advances on the same *with any other parties but us.* We also notify you not to divest yourselves of the control of any of the property, by assigning B. L., or in any other way, as you, we are legally advised, are re-

sponsible to us. You will consequently please confer with us in future, in regard to the disposal of said property." (p. 11.)

"You will distinctly understand, that if you dispose of, in any way, the property *consigned to you by R. McCabe & Co.*, without our consent, that we will hold you responsible for the value of it." (p. 11.)

It is difficult to see how Gregg & Hughes could make their determination to deal with *all the pork products* consigned to Drakely & Fenton, by R. McCabe & Co., as their own particular property, plainer than they have done by this letter.

Then comes the letter of Drakely & Fenton to Gregg & Hughes, of February 3, 1865, (p. 12.) in which they recognize the claim of the latter to deal with the property as their own, attorning to them, as it were. They say:

"We have decided to be governed by your instructions as to retaining the control of the goods, or proceeds of them, and we now assure you we have no wish to embarrass you, and will do all in our power to protect your interests."

On the 6th February, Gregg & Hughes wrote to Drakely & Fenton, and after speaking of some lard, which R. McCabe & Co. were to have let them have, but did not, say (pp. 12, 13.)

"In place of it he agreed that we should not only have the proceeds of sale of the 983 ts hams shipped to you, *but also all property of the brand of R. McCabe & Co., in your hands.*"

"*We claim the whole of the property--the hams, pork and shoulders —our receipts cover them.*"

The importance of these extracts consists in their showing that Gregg & Hughes, at this time, made no distinction between the hams, and the pork and shoulders; but, claimed to deal with all alike.

But the correspondence does not leave us merely to infer, from the ownership alone, that the hams were responsible for the advances made or for the general balance, when the final account sales of the whole was rendered.

On the 9th February, 1865, (p. 14.) Drakely & Fenton, writing to Gregg & Hughes, say:

"In naming figures we would advance to McC. & Co., we based our calculation on at least 300 lbs. tierces ham and shoulder, (we have generally found 300 to 320 the net weight of Ohio and Indiana tierces) McC. & Co., we find so far as examined, weigh 280 to

290. *We name this now*, as we shall, when you and Mr. McC. get the matter straightened so that we shall know in whose name to keep our account, make a new estimate, based on the actual weight of the hams and shoulders *and the depreciated market for all the goods, so that if an advance is required on the hams fix an amount low enough to give good margins on all the shipments.*"

This letter is an important one. It not only speaks of the hams and shoulders as in the same category, but refers to the letter of the 10th January, fixing the rate of advances shown by R. McCabe to Gregg & Hughes,—and it distinctly informs Gregg & Hughes that a new rate must be adopted, "*fixing an amount low enough to give good margins on all the shipments*," in which "*the depreciated market for all the goods*" was to be considered.

In other words, the advances originally proposed, owing to the fall of prices had turned out to be greater than should have been allowed; so that in determining now what was to be advanced hereafter, good margins on all the shipments were to be provided.

Now was the time for Gregg and Hughes to have made their present point —and said—"we cannot let the hams go in with the pork and shoulders, so as to give you a margin on all the shipments, for that would give you a lien for your general balance. This will never do—the hams were a separate transaction, and must be kept apart from the pork and shoulders—Deal with R. McCabe and Company for the latter; but the hams are an especial consignment, to be accounted for by itself."

Nor can it be pretended, that a balance, or margin, on *each* shipment, and not the general balance upon all, was meant. The nett proceeds of sales of the hams (p. 75) amounted to $37.694.66, —after all the losses detailed in the subsequent correspondence and discussed, —whereas Drakely and Fenton, in this very letter, *propose an advance of but* $20.000—which would have been far less than might reasonably have been asked, save for an apprehension of loss on the prior advances, which was to be covered by the sales of the hams. Had Gregg and Hughes not so understood it, their letter in reply would have been one of indignant remonstrance.

The letter in reply is dated February 11th —*and makes no comment* in this connection. (p. 15.)

The next letter is dated February 22d—this too *is silent upon the subject*. (p. 15.)

The next, dated February 27th, *instead of remonstrating* against Drakely and Fenton's views in regard to the liability of all the property, pork, shoulders and hams, for the advances already

made—and this is the question now before the Court—*expressly confirms it*—for they say (p. 16)—

"*We hand you memorandum of property in our hands which our order covers, subject to two drafts made by McCabe and Company on you with transportation and other regular charges*"— * * * and they add their thanks "for the very liberal and just course" pursued by Drakely and Fenton in the premises.

The memorandum enclosed is at p. 17 of the record, *and the hams are the last articles upon it!*

How, in the face of this letter, it can be contended, that the hams were not liable for the two drafts, along with all the other property consigned, is difficult to see.

If this letter of the 27th February stood alone—there might be some attempt at explanation. But it is consistent with all the previous correspondence, and is subsequent to the letter from Drakely and Fenton of February 9th, *claiming exactly what the letter of the 27th grants.*

Drakely and Fenton say in substance, we must revise the old estimates of January 10th—look to depreciated prices, and fix upon an amount low enough to give good margins; and Gregg and Hughes send a memorandum, in which the hams are enumerated, declaring them to be subject to the only drafts in reference to which a margin could be required!!

In the instructions which the Plaintiffs asked the Court below to give, is the following: (p. 77.)

6. "The Plaintiff's letter of the 27th February did not, in law, make the hams liable for the advances, previously made, on the drafts of McCabe and Company."

That is to say—that the law would protect the Plaintiff from the necessity of complying with their express, not merely *implied*, promise, when it was found to be inconvenient to them?

The view taken in the Court below was, that, admitting the construction put by the Plaintiffs in error on the letters of the 27th, there was no consideration for the responsibility insisted on.

Now there are two answers to this.

The argument on the other side, necessarily, is, that the hams, not being subject to the general balance, the letter of the 27th could not subject them to it in law.

This argument excludes the hams, therefore, from the agreement of Drakely and Fenton of January 10th to make advances on hams.

Drakely and Fenton then were in possession of the hams, with no obligation to advance on them.

Looking, however, at the letter of the 27th February and seeing, that, in terms, the hams were made responsible, along with the pork and shoulders, for the $59,000 already advanced—Drakely and Fenton on the 2nd March, (p. 17), acknowledging the receipt of the letter of the 27th February, whose contents they say they have carefully noted, consent to make a further advance, and subsequently do actually advance the further sum of $10,000.

Surely, this is a sufficient consideration. Admit that as a naked offer, the letter of the 27th February amounted to nothing, yet the moment reliance is placed, and action founded on it, the party making it becomes bound by it.

Not only was this additional advance made, but Drakely and Fenton, no doubt influenced by the margin which the hams gave them, instead of forcing a sale of the pork and shoulders to cover advances, held them for an improvement in the market.

But in connection with this question, the letter of the 6th of March, of Drakely and Fenton deserves notice. They say, (p. 20.)

"Under these circumstances and looking solely *to the goods as security for advances*, we cannot now make the advance we proposed to do in ours of the 2nd; with the most liberal estimate we can make, we have decided that $10,000 is as much *as we can add to previous advances.*

Here, again, in replying to this letter, was another opportunity of claiming the hams as a separate transaction, distinct from the pork and shoulders. The claim to hold for the general balance is most emphatically made;—and yet in the letter of the 15th of March, (p. 20.) acknowledging the receipt of the letter of the 8th, Gregg and Hughes, recognizing apparently the reasons of Drakely and Fenton, confine themselves to saying: (p. 23.) "We regret, that you could not, consistently, place more than $10,000 for us in New York." "We hope you may find it convenient yet to place some more for us, which we will deem as an especial favor."

Here, surely, there was no assertion of the right afterwards set up.

But there is a second answer to the 6th instruction asked for in the Court below.

The letter of the 27th February is not a single fact in the case, containing a promise, so to speak, for which there was no consideration—but one of a series of facts, going to show that Gregg and Hughes recognized the acts of McCabe & Co. up to that time—and assumed and continued all the obligations of their relations to Drakely and Fenton. Some of these facts are to be found in the admissions of the letter of the 20th January, others in subsequent letters, already commented on; and the letter of the 27th February is but a recognition of a state of things, *not created by it, but existing previously*, the proof of which it facilitates, and that is all. It is an admission of a fact that was susceptible of proof,—less absolute, perhaps, but sufficient for all that—without it.

To corroborate the views taken by the Plaintiffs in error, of the relations of the Defendants in error to all the property in question, other references to the correspondence may be made.

On the 8th of March—before, it would seem, Gregg and Hughes received Drakely and Fenton's letter of the 6th—the former write (p. 21)—

"We herein enclose to you Col. McCabe's order on you for the pork products." "In regard to the sales of the stuff, we will place the matter entirely in your own hands, to use your judgment and discretion as to the best time to sell."

The order here mentioned (see p. 19 of the record) was as follows:

CHICAGO, February 25, 1869.

Messrs. Drakely and Fenton, Baltimore, Md.

GENTLEMEN:—You will please place the proceeds of all the pork products consigned to you by us to the credit of Messrs. Gregg & Hughes, of Chicago, Illinois, and oblige

Yours, &c., R. McCABE & Co.

Accepted, Mar. 20, '65.

On the 15th March, Gregg and Hughes write (p. 22)—

"In regard to holding on to the property for any great length of time, we can only say that it is not our desire to do so if we can avoid it without sacrificing it." "We certainly do not wish to hold the hams and shoulders until warm weather, and hope you will be able to sell them before that time. If anything is to be held, let it be the pork."

On the 20th March, Drakely and Fenton write an important letter, in which they say (p. 23)

"As the market is now we cannot estimate *the entire shipments of McCabe and Company* to a figure any greater than we now have in them; and had the business been consummated, as we originally hoped, we should no doubt ere this have been compelled to ask for a margin."

The "shipments" of McCabe and Company it will be recollected covered the hams as well as the pork and shoulders, on all of which there had been at this time advanced $41,000,+$18,000,+ $10,000.

Even to this letter there is no reply claiming the hams as a separate transaction; but on the 29th March, acknowledging the receipt of it, Gregg and Hughes (p. 24) speak of an improvement in the market, and say—

"While we are exceedingly anxious to have the property in your hands disposed of, as we could use the money invested to a good advantage, we would not urge the sale of it hastily, if the prospect of a further advance is any way flattering."

Again on the 25th April, (p 24) they write—

"We hope that you will soon be able to dispose of some of the hams and shoulders at good prices, and the pork also; we think however, it would be better to hold the pork longer than the other stuff. Please give us your views on that point Our New York balances will require us to place some funds there very soon, *and as we have calculated on the consignments to you to help us through*, we beg leave to ask you whether with the present prospects, you could not within a few days place $5,000 with Hennigs, Flint and Pearce, and accept our 30 and 60 day bills on you for $10,000 more, favor of Messrs. David Dowse and Company, being a total of $15,000. If you can favor us in this way it will enable us to hold some property that may be greatly to our advantage to not have disposed of at present.

Recollecting that but $10,000 had been advanced on the hams, which, under unfavorable circumstances—produced $37,694 76—it is impossible to read this letter and believe that, when it was written, Gregg and Hughes believed the hams were a separate transaction, or that they were not liable for the general balance on final account—embracing all the consignments. The whole tone of the letter corroborates the view taken by the Plaintiffs in

error of the relations between them and the Defendants touching all the consignments.

Again on the 8th April, as if to prevent the possibility of a misunderstanding, Drakely and Fenton write to Gregg and Hughes (p. 25):

"Making the best estimate we can, the advances already made are larger than we would make now on a duplicate shipment."

In reply to this letter, Gregg and Hughes write, April 14, (p. 26):

"We regret that you felt constrained to advance no more than the $10,000 you sent to New York on our 983 hams—the advance you made on the pork and shoulders was more liberal."

Still there is no denial of the right of Drakely and Fenton to deal with the whole of the consignments as the property of Gregg and Hughes.

On the 22d April, Gregg and Hughes write again, (p. 27.)

"Please give us your views generally concerning the condition of the property you hold for us, and the price you can get, also the prospect of selling at an early day."

Then on the 3d May, Gregg and Hughes write again:

"We would be glad of your views as *to the net value* of the property you have for us, at present market rates. We, of course know you cannot tell exactly what it would sell for, but we suppose you can form an opinion somewhere near its value. We would be pleased to have you furnish us with your account sales of each lot sold, *and your account current when all is closed out.* We can then keep the run of how the stuff is selling, and might be governed somewhat in selling off rapidly or gradually.

To this letter Drakely and Fenton reply on the 8th May (p. 29):

"We have made a rough estimate of your whole provision business, based on present nominal prices, and the net balance is about $10,000.

Now begins the change in the conduct of the Defendants in error which has led to the present litigation.

Up to this time, it will be borne in mind that Gregg and Hughes had been insisting, in the first instance, on their legal title to the whole property, founded on their warehouse receipts; and not satisfied with these, inasmuch as the pork, shoulders and hams had in fact been consigned by R. McCabe and Company, they had

obtained from Col. McCabe, under threats, if he did not give it, an order from R. McCabe and Company for the proceeds of the entire consignments.

Up to this time, all Drakely and Fenton's notices in regard to margins had been disregarded.

Now, however, repudiating the ownership so strenuously insisted on, Gregg and Hughes, on the 12th May, write to Drakely and Fenton: (p. 29).

"We hope you have been able to dispose of the greater portion, if not all of *our hams* by this time at good prices, as also *some of the other portions of McCabe and Company*, the proceeds of which over and above your charges and advances on them is to be placed to our credit."

Here "our hams" and "portions of McCabe and Company" are referred to as if they were properties in the hands of Drakely and Fenton belonging to different parties.

Having thus changed their views, the future correspondence is made to conform, and in the letter of May 22, (p. 30), "our hams" are again spoken of, and Drakely and Fenton are for the first time told,

"You will please keep the ham account separate." "The ham account sales you understand will be made direct to us." "The pork and shoulders will be made out to McCabe and Company for our use; we do not want to get the property confused by running it all together. The hams are *exclusively* ours, and the other stuff, we are to have the benefit of what may be in your hands when sold, after deducting your advances and charges on the same."

The reason for this change is very evident: The letter of Drakely and Fenton reporting the nett of all the consignments as not exceeding $10,000, when the net value of the hams alone was so much greater, on which but $10,000 had been advanced, showed the importance of separating the hams from the pork and shoulders, so that the shortcoming of the latter might not become a claim on the proceeds of the former.

There would be more reason for this change in the tone of the letters of Gregg & Hughes if it was justified by the facts; and if in truth any distinction could be drawn between "our hams" and the "portions of McCabe & Co.," by which is meant the pork and

shoulders. But there was no such difference. Gregg & Hughes' letter of the 22d January, p. 7, is conclusive upon this point.

In that letter they show that their title to all the property was the same. It grew out of "large sums of money advanced during the winter to R. McCabe & Co., of this city (Chicago) to pack pork with, and for which Gregg & Hughes "had been getting their warehouse receipts with policy of insurance covering the same as security."

No distinction is made in the letter of the 22nd of January in regard to the title given by the warehouse receipts. It is no where stated that while the pork and shoulders were held as security there was an absolute ownership in Gregg & Hughes in the hams.

"There was still," says the letter of the 22nd, "a considerable quantity of lard and hams remaining here which we supposed was sufficient to secure us for our advances here in addition to what we had in New York." We were satisfied with that arrangement, (referring to one made with McCabe & Co.,) and on Tuesday last proposed to ship to you in a few days *the* hams that were still here, there being about 1,000 tierces in which we were interested, &c.

It has not been pretended that these hams were not the hams covered by R. McCabe & Co's. warehouse receipts, and that they were not held as security for advances made on them.

It has not been pretended that Gregg & Hughes took them to themselves at any fixed price, crediting R. McCabe & Co. with the amount, and so making them in the sense of their letter of the 12th May "our hams," as distinguished from "other portions of McCabe & Co."

The origin of the title to all these pork products was the same.

The actual ownership, as proved by the warehouse receipts was the same.

The equitable ownership as security for advances was the same.

They were consigned by the same party to the same consignee, Drakely & Fenton.

The order of February 25th directing the proceeds of all the pork products consigned, to be placed to the credit of Gregg & Hughes, made no distinction between "our hams and other portions of McCabe & Co."

The previous and subsequent correspondence up to the 12th May made no such distinction.

It is therefore insisted that the distinction contained in the letter of the 12th May is not borne out by the fact, and cannot therefore be regarded as having any existence whatever.

The letter of Gregg & Hughes of May 31st, speaks of "our hams and McCabe & Company's stuff." (p. 31.)

Drakely & Fenton, however, are not disposed to recognize the new distinction taken by Gregg & Hughes, and say in their letter of June 5th: (p. 31.)

"We do not propose to change the aspect of our relations to you as assignees of McCabe & Co., to receive from us whatever balance may be due them when their consignment of hams, shoulders and pork shall have been closed."

This "change of base" appears to have been well understood in the subsequent correspondence. On the 27th June (p. 32,) Gregg & Hughes take care to use the term "*our hams*" twice; and in their letter of the 8th July, (p. 32,) Drakely & Fenton inform Gregg & Hughes that they have been "pushing off the *McCabe hams* as rapidly as possible." Again, on the 15th July, Gregg & Hughes (p. 34,) speak of "our hams" Again, on the 20th (p. 34,) again on the 29th (p. 36.)

There is a good deal of correspondence on the record which does not particularly affect the case after the 1st August. The new base has placed the parties in antagonism, and their letters are what might be expected. But in August, David Dowse & Co., with whom Gregg & Hughes have relations in New York, wrote to Drakely & Fenton for remittances, which these last refusing, Gregg & Hughes write on the 14th of August a letter (p. 42.) in which they reiterate the distinction between the hams, shoulders and pork, saying that

"We have your letter to McCabe & Co., authorizing them to make drafts on bills of lading on hams, shoulders, prime mess and mess pork, which we presume they have done on all but the hams. They made no bills against them from the fact that they had no right to do so, as the hams belonged to us."

It is strange that, after all the correspondence that has been here given, Gregg & Hughes, while referring to the letter of January 10th, authorizing the drafts for advances, should say, on the 14th August, they *presumed* R. McCabe & Company drew for the $41,000 and $18,000!

The correspondence closes with a letter from Gregg & Hughes of September 16, 1865, (p. 47.) in which they present their view of the case, which is now before the Court.

The main feature of the letter of September 16th is the reiteration of the assertion, made first in the letter of the 22d May, that the hams were the property exclusively of Gregg & Hughes, with the additional assertion that Drakely Fenton knew such to be the fact from the beginning.

If Gregg & Hughes meant by this that the warehouse receipts gave them the legal title to the hams, then what they say is true.

But if they meant that they had any better title to the hams than they had to the pork and shoulders, so as to justify their speaking of "our hams" and "McCabe & Company's stuff;" so far as the record affords testimony, it is not true.

So, if all they meant to say in regard to Drakely & Fenton, was, that they knew of the warehouse receipts, then what they say in this connection is true from the 21st of January, when Gregg & Hughes intervened for the first time.

But if they meant to say that Drakely & Fenton knew that their ownership was exclusive as regarded the hams, and that they had a interest as regarded the pork and shoulders—they are contradicted by their January letter, from which extracts have already been made to show that they described the whole of the property, pork, shoulders and hams, as having been given to them to cover advances and by way of security.

If then their right to hold the hams clear from all liability for the general balance, depends, on their peculiar ownership as set up after the 22nd May it fails, because there is no evidence on the record to show the fact; but on the contrary the correspondence, up to the time when they changed their base in May, insists upon their equal title to all the pork products consigned to the Plaintiffs in error by R. McCabe & Company.

Regarding, then, the defendants in error, Gregg and Hughes as the owners, by the same title, of the pork, shoulders and hams —we find them, after the pork and shoulders had been consigned without their consent, making no serious objection and receiving the proceeds of the advances,—we find them, after the consignment of the hams without their knowledge, insisting that the *whole of the property* was "virtually and legally" theirs, and taking from the consignors an order on Drakely and Fenton for the proceeds of *all the pork products consigned.* We find them declaring, in so many words, that the property which the order covered, including the hams now in dispute, was subject to the consignors' two drafts, the transportation and other regular charges—the liability now denied:—we find them, throughout,

controlling the disposition and management of all the property, and making no objections, when Drakely and Fenton referred to the *whole* as a security for the advances, leaving them to suppose, if they had ever doubted on the subject, that this was a thing of course;—we find them, in a word, acting in the premises as though the relation of factor and principal as to all the consignments, had been established between the Plaintiffs in error and themselves, until the fall in prices and the indifferent condition of much of the property made it probable that the pork and shoulders would not cover the advances.

The Plaintiffs in error, then, upon a review of all the testimony, hold, that they have proved what they set out to prove—to wit—that Gregg and Hughes were substituted in all the relations established between R. McCabe and Company and Drakely and Fenton, and assumed all their obligations, in regard to all the property—pork, shoulders and hams,—consigned by the former to the latter, or that the relation of principal and factor between McCabe and Company and Drakely and Fenton, as to all the consignments was ratified, adopted and continued on the understanding that the proceeds should be paid to Gregg and Hughes.

But in addition to the correspondence here referred to, there was other testimony produced at the trial in the Court below, which it is proper to notice. Mr. Hughes, one of the Defendants, was examined for the purpose of proving that the pork and shoulders stood by themselves, and that the hams were a separate and distinct transaction.

It will be observed on examining the evidence of Mr. Hughes at pp. 51, 55 of the record, that he no where insists upon any distinction in regard to the title that Gregg and Hughes held to the pork, shoulders and hams The advances made to R. McCabe and Company, he says, (p. 57) were "on pork products slaughtered and cured by them, for which they, G. and H., held warehouse receipts"—He says nothing to justify the frequent use in their letters of "our hams" and "McCabe and Company's stuff" so far as there was any difference in the title by which the hams and stuff were held.

The general scope of the testimony of this witness, however, may be gathered, so far as it bears upon the question now before the Court, from his answers to the 8th interrogatory. He is asked:

8. Did your house ever assent or agree, or receive any consideration whatever from Drakely and Fenton, or any other person, for assenting or agreeing, to the appropriation (approbation in the record, which is a mistake) of the hams referred to in whole or in part by Messrs. Drakely and Fenton, as a security for advances made to McCabe, or McCabe and Company, or any other portion of the products in question or at the time of the shipment of any portion thereof?

The answer to this is "No."

But, look at the letter of 27th February accompanying the memorandum of the property covered by R. McCabe and Company's order, hams included.

"We hand you memorandum of property in your hands which our order covers, *subject to two drafts made by McCabe and Company* on you, with transportation and other regular charges."

The witness in the 9th interrogatory was asked to look at this letter and explain the circumstances attending its writing.

The letter spoke for itself. Its language above quoted was clear and unequivocal. It conveyed and could convey but one idea to the mind of the party to whom it was addressed. If it did not express the mind of the writer, it was unfortunate for him; but Drakely and Fenton could know nothing of its short comings in this connection.

In answering the question, however, the witness says the letter is in his handwriting—and then in face of the language above quoted—goes on to say:

"The hams in question were not subject in any manner or form to the drafts therein referred to, or either of them. *We never agreed or assented that they should be*, nor do we remember that we were ever requested to give assent that they should—we supposed, after our letters to Drakely and Fenton explaining our right, and in view of Elliott's agreement with them, and with their own knowledge of the fact that they, Drakely and Fenton, had authorized in their letter of January 10th, 1865, previously referred to, the drafts made by McCabe and Company on the security of bills of lading of pork and shoulders and nothing else—that they would understand our letters according to what they knew the fact to be, and as recognizing as subject to the draft only the pork and shoulders—we *were not writing with legal precision*, but to mercantile correspondents, whose good faith we supposed would be above taking advantage of a loose phrase, the real meaning of which they perfectly understood."

This reply is inserted at length, that the Court may judge how far it is an answer to the question, and how far it is satisfactory to show, that when Drakely and Fenton are told on the 27th of February that the property mentioned in the memorandum accompanying the letter, and in which the hams are included, was subject to the two drafts, they should have understood that only *a part* of the property was meant!

So far as a want of legal precision is suggested, it may be said that it is the legal precision used which frees the case from all doubt. Nothing can well be imagined clearer with regard to what the drafts covered than the letter of the 27th February.

So far as the 8th interrogatory enquires into the consideration for subjecting the hams to the lien of the drafts, this matter has already been discussed. If the relation of factor and agent is established that alone answers the question. But a conclusive answer, also, is the fact, that after the letter of the 27th of February, Drakely & Fenton made advances by remittances to New York, amounting to $10,000.

Another witness examined was Timothy Lynch, the bookkeeper of Gregg & Hughes. This witness testifies to the relations between Gregg & Hughes and R. McCabe & Co., in Chicago, and that of the $59,000 advanced by Drakely & Fenton, $48,290.03 was the amount retained by the Defendants in error. This witness proves clearly that the title to *all* the property was the same; that there was no peculiar ownership of the hams

George E. Dorrington testifies to facts connected with the shipments of the property; but his evidence has no particular bearing on the questions now under discussion.

The next witness examined for the Defendants in error was Mr. George T. Elliott—(p. 71,) the witness named in the letter of the 27th February.

Mr. Elliott stated that "it was left optional with him to take the hams out of the hands of the Defendants or leave them there. The object was to leave the hams in the hands of Drakely & Fenton or in the hands of some one else for and as the property of Gregg & Hughes." This witness further stated that the idea between McCabe & Company's and the Defendants in error was, that the order referred to in the letter of the 27th February covered

the excess of the pork and shoulders over the drafts on them, while G. & H. had the entire interest in the proceeds of the hams.

On this part of Mr. Elliott's testimony, it is only necessary to say that the letter of the 27th spoke for itself and was corroborated in its plain language by the subsequent action of the parties.

Mr. Elliott further testified to what took place in his interviews with Drakely & Fenton; the scope of his testimony being, that going on to Baltimore to see after the hams, along with other business, he had called on Drakely & Fenton; and that his instructions being that if they would not consent to receive the hams on account of the Plaintiffs, to replevy them. Drakely & Fenton, however, "showed no disposition to treat the hams otherwise than as the property of Gregg & Hughes." "It was finally arranged that Gregg & Hughes should procure an order from McCabe & Co. in regard to the hams, or an assignment of the B. L., and send it to Drakely & Fenton, who would then place the hams to the credit of Gregg & Hughes." "The hams were not to go to any one's credit till the question was settled as to ownership by the order or bill of lading; the hams were to be then placed on the books of Drakely & Fenton as the property of Gregg & Hughes. There was no positive understanding about the pork and shoulders."

This part of Mr. Elliott's testimony is contradicted, however, by Henry W. Drakely and Joel Hinman, the parties with whom he had intercourse in Baltimore in this connection.

Henry W. Drakely, one of the Defendants, swears (p 76.) that Mr. Elliott, on his arrival in Baltimore, claimed everything that had been consigned to Drakely & Fenton by R. McCabe & Co. The hams had not then arrived. Elliott wanted Drakely & Fenton to receive the property as the property of Gregg & Hughes. The Defendants below refused; and gave as reason that the property had come to them as the property of McCabe & Co., and the warehouse receipts, which he, Elliott, presented, might refer to other hog products than those of Gregg & Hughes. Drakely & Fenton told Elliott they had declined making McCabe & Company advances because of the advices of Gregg & Hughes: that they, Drakely & Fenton, believed what McCabe had said, that satisfactory arrangements would be made with him; and they, Drakely & Fenton, would not make advances to McCabe & Company until Gregg & Hughes had time to substantiate their title to the property. In due time Drakely & Fenton got an order from McCabe & Company in favor of Gregg & Hughes, dated February 25, 1865, which

wasaccepted on the 7th of March. They also received the letter of the 27th February, 1865, with the memorandum showing what the order covered.

While Elliott was with Drakely & Fenton he made no difference in his claim to any portion of the property. He claimed it all, and the witness thinks he did not think Elliott claimed it for any other purpose than for the purpose of preventing advances of money to McCabe, which Drakely & Fenton readily agreed not to do, believing it to be due to Gregg & Hughes. The arrangement thus made was a temporary one.

Joel Hinman, another member of the firm of Drakely & Fenton, swears (p. 76.) that the visit of Elliott had relation to the hams, and Elliott showed warehouse receipts covering McCabe's entire business, and stated he wanted Gregg & Hughes (interest—this word omitted in the record but probably intended,) in the hams secured. He claimed the entire shipments that had been made by McCabe & Company. And Drakely & Fenton agreed to make no further advances and to wait for an assignment of the bills of lading or an order from McCabe & Company as an assurance that Gregg & Hughes did own the hams. No difference was made in regard to the several shipments, except that the pork and shoulders had been advanced on and the hams had not. But Gregg & Hughes, through Mr. Elliott, claimed all the pork products alike by virtue of their warehouse receipts."

The difference between Elliott on the one hand, and the witnesses Drakely and Hinman on the other, is, that Elliott attempts to show, that while the title to the pork and shoulders was to be in McCabe & Company, the title to the hams was to be recognized as an especial consignment belonging to Gregg & Hughes, and with which they were to be credited on the books of Drakely & Fenton. Testimony of this description was designed to relieve the hams from the lien of Drakely & Fenton for their general balance. The other witnesses, however, say that Elliott made no difference in his claim to any portion of the property. "He claimed it all," says Drakely. "He claimed the entire shipments that had been made by McCabe & Company," says Hinman.

Apart from the fact that two witnesses are here opposed to one, on which side are the probabilities?

Gregg & Hughes had, in fact, the legal title to *all* the property, and there was no reason why they should not claim it all.

They had made advances on the entire property—a part of which had been returned in the two drafts, leaving, as was supposed, a margin still, that would be coming to them over and above the amount advanced.

The only difference between the pork and shoulders and the hams was in the *amount* coming from the two, not in the *right to receive* whatever might be coming.

Except therefore, in the fact that Gregg & Hughes might feel more anxious about a great sum than about a small one, there was no reason why Elliott should have made any distinction between the pork and shoulders and the hams.

The probabilities are, then, that Elliott made no distinction between the several pork products, rather than that he did.

These views are corroborated unquestionably, when we find that all three witnesses concur in saying that matters were to remain in *statu quo* until the question was settled by an order or assignment of the bills of lading from McCabe and Company; and we find further, that when the order was presented, it covered *all* the property, and that the letter which enclosed it made it *all* subject to the two drafts so often referred to.

An examination, therefore, of the oral testimony only corroborates the conclusions drawn from our examination of the correspondence.

It remains now to show wherein the Court below erred in the instructions given to the Jury.

The Court says:

"If the Jury shall find from the evidence in this cause that the pork and shoulders were shipped to Defendants, Drakely and Fenton, for sale by McCabe and Company as their own property, without the knowledge and consent of Gregg and Hughes, and that McCabe and Company drew on Defendants for the amount of advance agreed to be made by them on said shipments; that Gregg and Hughes on learning of the same, did not object to the said shipment, but received and negotiated for McCabe and Company the drafts drawn by them on Drakely and Fenton for the advance, and received, and credited said McCabe with a part of, the same, and paid the balance to said McCabe and Company; and that they agreed that Gregg and Hughes should receive any balance that might remain from the pork and shoulders after deducting said advances, expenses, &c. And shall further find that McCabe and

Company shipped the hams to Drakely and Fenton without the knowledge and consent of Gregg and Hughes, but before they reached Drakely and Fenton, were notified by Gregg and Hughes that the hams belonged to them, and could only be received as their property; and if after said notification, Drakely and Fenton received and sold said hams; and if the Jury shall find, that at the time when said hams were shipped to, received and sold by Drakely and Fenton, Gregg and Hughes held the legal title to the same by virtue of the warehouse receipts held by them, then Gregg and Hughes are entitled to recover, &c.

In addition to the above instruction, the Court stated to the Jury that the fact (facts it should be), upon which the instructions were founded being admitted, they must find for Plaintiffs.

The Court's instructions would have been less exceptionable if there had been added, from the 3d prayer of the Defendants in error, as follows: "Yet if the Jury shall believe that the Plaintiffs below, (Gregg and Hughes), although they may have been ignorant, at the time of each consignment of the several portions of said property, of the fact that it was being made to the Defendants—subsequently recognized and acquiesced in such consignment, and received advances thereon; as well on the hams as on the pork and shoulders, and assumed and exercised the control of owners of all the said property, without discrimination—then there is evidence from which the Jury may infer, that the relation of principal and factor was established with regard to the whole consignment, from the date, at all events, of the order of McCabe and Company of the 25th February, and the letter of Gregg and Hughes of the 27th, in which event Drakely and Fenton would be authorized to retain from the net proceeds of said consignments the amount of their advances, with interest, and the verdict must be for such sum only as remains after deducting said advances from the net proceeds aforesaid.

It has been the purpose of this very full review to show that there was ample testimony on which to rest the instructions here asked for by the Plaintiffs in error—testimony, none of which was excepted to, and which was directed to the main, indeed the only point in issue—the right of the Defendants below to retain for their general balance; and yet, ignoring all this mass of evidence, ignoring, indeed, the only question in the case, the Court in substance says: If A consigns the property of B to a factor, which B

subsequently *assents to*, and afterwards makes another consignment of B's property to the same factor, which B *objects to*, and so informs the factor, the latter becomes responsible to B, irrespective wholly of the first transaction.

Now, whether this is law or not, depends on circumstances. It is law, if no other facts are involved; but it is not law, if there is evidence to show that B's conduct with regard to both consignments was, either in the first instance, or afterwards by putting himself in the shoes of A, that of a principal dealing with his factor, making no distinction with regard to the two consignments; but, on the contrary, informing the factor in writing that both were alike responsible for the advances on the first. And when testimony to this effect is offered, the Court cannot ignore it in their instructions to the Jury. It was offered here, without objection, and it was ignored; and hence the error which it is proposed now to correct.

At the trial of this cause in the Court below, the Plaintiffs in error offered five Prayers—

1st. The first prayer asked the Court to instruct the Jury, that the warehouse receipts gave to Gregg & Hughes the right to hold the pork products as security for advances, and made them owners at law of said products.

2d. The second prayer, after enumerating the facts of the case at length, asked the Court to instruct the Jury, that those facts if true, afforded evidence from which the Jury might infer, that the relations existing between the Defendants in error and the Plaintiffs in error, were those of principal and factor, as to both consignments.

3d. The third prayer was founded on the recognition and adoption by the Defendants in error, of all the consignments and their receipt of advances thereon, as evidence from which the Jury might infer that the relation of principal and factor existed between them and the Plaintiffs in error, as to the whole consignment of pork, shoulders and hams.

4th. The fourth prayer asserted, that the assent of the Defendants in error to the shipment of the pork and shoulders, and the fact that the advances thereon were received by them, under the circumstances of this case, gave to the Plaintiffs in error a right to have said advances deducted from any money in their hands, belonging to the Defendants in error.

5th. The fifth prayer had reference to the fact that the assignment of the bill of lading was ante-dated.

The Court below granted the 1st and 5th prayers, but rejected the 2d, 3d, and 4th prayers, and gave to the Jury the instruction above set forth. The Court thus, out of a mass of facts all bearing on the issues, selected a few that were not denied, and ignoring all the rest, told the Jury to find their verdict for the Defendants in error. The Plaintiffs in error excepted, as well to the instruction given by the Court below, as to its refusal to grant their 2d, 3d and 4th prayers. If the instruction was right, the prayers were properly refused; and as the clearest mode of presenting the case to this Court, it is proposed to examine the correctness of this instruction.

The only operative part of the instruction is the last clause, commencing with the words, "and shall further find that McCabe & Co. shipped," &c., and this clause puts the case to the Jury on the naked facts that Gregg & Hughes were the owners of the hams, and gave notice of their title to the Plaintiffs in error before the hams were received by them. So that, although the case is full of evidence, conclusively showing that the hams were received by the Plaintiffs in error, with the consent, and indeed at the request of Gregg & Hughes, upon terms distinctly appearing in their letters and other documentary proof, the Plaintiffs in error, were not permitted to avail themselves of this evidence, but were placed before the Jury in the simple legal attitude of parties who had received the property of Gregg & Hughes, after notice that it was their property. Manifestly this was error, unless the agreement between the parties as disclosed by the evidence, was for some sufficient reason to be regarded as invalid and of no effect. To ascertain whether this was so, it is necessary to refer briefly to the relations which the parties to the suit bore to each other and to the property and its proceeds in regard to which this controversy has arisen.

McCabe & Co. shipped pork and shoulders to the Plaintiffs in error, who made large advances on the consignment. A few days afterwards the same firm made a shipment of hams also to the Plaintiffs in error. As against McCabe & Co., the relation of principal and factor was clearly established, and the law gave to the Plaintiffs in error a lien on the hams for their general balance, of which they could not be deprived except by some contract, express or implied, between them and their principal.

Story on Agency, Sections 376–378.

Before the hams reached the Plaintiffs in error, Gregg & Hughes gave them notice of their claim. This claim was at first denied by McCabe, but after communications and negotiations, as shown

by the proof, between him and Gregg & Hughes, the matter was settled by Gregg & Hughes obtaining from McCabe & Co., an order on Drakely & Fenton, directing them to "place the proceeds of all the pork products consigned to you (them) to the credit of Messrs. Gregg & Hughes." P. 19 of Record. This order was presented to Drakely & Fenton for acceptance, and was accepted by them. It covered both consignments by its terms, and the letter of Gregg & Hughes of Feb. 27th, 1868, (P. 16 and 17 of Record) encloses a list of "Baltimore Shipments" including the pork, shoulders and hams, and says, "We hand you memorandum of property in your hands, which our order covers, subject to two drafts made by McCabe & Co. on you, with transportation and other charges."

Do not these facts sufficiently show that there was nothing in the arrangement made by Gregg & Hughes with McCabe and the Plaintiffs in error, to change or take away, either expressly or by implication the right the Plaintiffs in error had against McCabe & Co., to a lien on the hams for their general balance resulting from advances on the first consignment? Was there anything in those facts, so far as this question of lien is concerned, to alter or destroy the relation of principal and factor between McCabe & Co. and the Plaintiffs in error? On the contrary, the order of McCabe & Co. as to the proceeds, which was received by Gregg & Hughes, and accepted and acted on at their request by the Plaintiffs in error, recognizes McCabe & Co. as principal and consignors, and makes Gregg & Hughes claim as assignees of proceeds. They can not, in the absence of fraud on the part of the Plaintiffs in error, present their claim in the character of assignees, and after that has been admitted and acted upon, abandon it and claim in a higher or paramount right. This evidence, if not conclusive, goes far to establish that by arrangement between the parties, Gregg & Hughes were to take as assignees, and if so, it is clear that they took the assignment of the proceeds *cum onere*—they took only that to which McCabe & Co. had a right, and that was the proceeds, subject to all equities which existed between that firm and the Plaintiffs in error.

Spring *vs.* Insurance Co., 8 Wheaton, 268.
2 Story's Equity Jurisprudence, sec. 1047.

If we are wrong in the view that the relation of Gregg & Hughes to the Plaintiffs in Error was simply that of assignees of the proceeds of all the pork products, it can only be on the ground that taking a broad view of the whole evidence, they had substituted themselves in the place of McCabe & Co., and had thus

established the relation of principal and factor between themselves and the Plaintiffs in Error as to both consignments. If this be so, the substitution would not destroy the right of said Plaintiffs to a lien for their general balance unless a contract to that effect, express or implied, is found in the evidence. So far from this being the case, the extract from their letter of 27th February, 1868, *expressly* assures to the Plaintiffs in error their lien on both shipments.

It is very clear that where a person who has the custody of property belonging to another, has without authority entered into any contract in reference to it, the owner may, if he think fit, adopt what has been done, and by agreement substitute himself as a party to the contract in the place of his faithless agent, and with all his rights and responsibilities under the contract. In this case Gregg & Hughes were the legal owners as well of the pork and shoulders as of the hams. They received the whole of the advance made by the Plaintiffs in error on the pork and shoulders, though they gave a small portion of it to McCabe & Co. They asserted their title to both the shipments. They recognized and adopted what had been done in reference to each—they assumed to be principals and to direct and control the disposal of both shipments, and this too upon their express assurance as to the lien of Plaintiffs in error on both shipments. This was clearly evidence to go to the Jury, to show that they had adopted what had been done by McCabe & Co. as to both shipments, and had, with the consent of all parties, declared themselves the real principals in the matter, and substituted themselves in the place of McCabe & Co. in their relations with the Plaintiffs in error. Such an adoption of what had been done by another, operated as an adoption of all that had been done. The law would not permit them to affirm what was beneficial and to reject the remainder. They must adopt the agency *cum onere*, in the absence of special agreement to the contrary.

Hovil *vs.* Pack, 7 East. 164–166.
Wilson *vs.* Poulter, 2 Strange, 859.
Billon *vs.* Hyde, 1 Atk. 128.

There was thus evidence in the cause, of an arrangement between the Defendants in error, and McCabe & Co. and the Plaintiffs in error, by virtue of which the said Defendants either became the assignees of the *proceeds* of all the pork products, (shoulders and hams,) leaving the relation of principal and factor subsisting between McCabe & Co. and the Plaintiffs in error, or

adopted McCabe & Co's acts, and substituted themselves as principals in the place of McCabe & Co. in reference to both the consignments, thus *continuing* in their own names the relation of principal and factor before existing between McCabe & Co. and the Plaintiffs in error.

It is supposed that all this evidence of an agreement between the parties, by which their mutual rights and relations were established, was disregarded by the Court below, upon the ground that such an agreement on the part of Gregg & Hughes was *nudum pactum* and without validity or effect. It is respectfully submitted that this position is not well founded. Whether the true agreement was that Gregg & Hughes should take the proceeds, as assignees, or that they should come in as principals and take the place of McCabe & Co. in relation to both consignments, there was to be found in the evidence a sufficient consideration to support it. If they were assignees, a consideration for the agreement is found in the fact of the receipt by Gregg & Hughes in settlement of their difficulties with McCabe & Co. of the order for the proceeds of both consignments, and its acceptance by the Plaintiffs in error. If they are to be regarded as principals, adopting what had been done, the establishment of the relation of principal and factor between them and the Plaintiffs in error, was, of itself, a sufficient consideration, for their undertaking to comply with the terms on which by agreement that relation was to exist. Besides, it seems clear that one who adopts a contract in reference to his property, which had been entered into by another, accepts the original consideration of the contract, as a sufficient consideration for his adoption of it.

Pearsoll *vs.* Chapin, 44 Penn. 9, 14, 17.
Kenan *vs.* Holloway, 16 Alabama, 53.
Forsyth *vs.* Day, 46 Maine, 176.
Wilmot *vs.* Richardson, 6 Duer, 328.

It is therefore contended, that the Court below erred in submitting the case to the Jury, upon the simple questions of legal title to the hams in the Defendants in error, and notice of that title given to the Plaintiffs in error; that the Court should either have itself construed the agreement between the parties, as appearing in the documentary evidence, or more properly under the circumstances of this case, have sub nitted to the Jury, as the appropriate tribunal, to find from the evidence what was the true agreement between the parties.

Brown *vs.* McGran, 14 Peters, 493.
Turner *vs.* Yates, 16 Howard, 23.

It may be added, that the proceeds of the pork and shoulders being altogether inadequate to pay the advance made upon them, it is just and equitable, under all the circumstances of this case, that the Plaintiffs in error should have a lien on the hams for their general balance arising out of this deficiency, as the Defendants in error were the legal owners and received the proceeds of both consignments.

J. H. B. LATROBE,
I. NEVETT STEELE,
For Plaintiffs in Error.

In the Supreme Court of U. S.

HENRY W. DRAKELEY, AND OTHERS,

vs.

RICHARD GREGG, &c.

Brief and Points of Defendants in Error.

S. T. WALLIS,
J. H. THOMAS,
For Def'ts in Error.

Murray & Co. Printers and Stationers, 182 Baltimore street, Baltimore

In the Supreme Court of the U. States.

HENRY W. DRAKELEY, AND OTHERS,

vs.

RICHARD GREGG, &c.

BRIEF AND POINTS OF DEFENDANTS IN ERROR.

This was an action of assumpsit brought by the Appellees against the Appellants, to recover the net proceeds of certain hams, the property of the former, which had been sold by the latter. The Appellants claimed that they were entitled to deduct the amount of advances they had made on pork and shoulders to R. McCabe, a provision packer in Chicago, trading in the name of McCabe & Co. The Appellees, merchants also of Chicago, had advanced to McCabe very large sums of money on the security of hog products in store, to enable him to carry on his business as a packer, and in accordance with the usual custom in that city, held warehouse receipts, covering the "hams," "pork" and "shoulders," the intent and effect of which was to vest in them the absolute legal ownership of all said property until said advances were paid. Nearly seventy thousand dollars of these advances were still due to the Appellees at the time of trial, and if they eventually recover all that is claimed by them in this suit, more than thirty thousand dollars will still remain unpaid; pages 51, 2 and 66. The Appellees being, by virtue of the warehouse receipts, the legal owners of all of said

property, and having, by the understanding between them and McCabe, the entire control thereof, had been shipping it to New York in their own names, for sale on their own account, and crediting McCabe with the net proceeds. He, however, entered into a private arrangement with the Appellants by which they agreed to receive from him consignments of so much of said meats as he might choose to make them, and to advance him, on sight drafts accompanied with bills of lading, $ 40 per tierce on hams, $30 per tierce on shoulders, $30 per barrel on mess pork, and $30 per barrel on prime pork.

A consignment of pork was accordingly made by him to Appellants, on which a draft of $41,000 was drawn, and a consignment of shoulders, on which a draft of $18,000 was drawn, in accordance with this agreement, the distinction being carefully preserved as to the particular property against which each draft respectively was drawn. Pages 4, 5, 6 and 52. This arrangement having been made, the pork and shoulders shipped, and the drafts drawn without the knowledge of the Appellees, McCabe applied to them to aid him in getting the drafts discounted. They knowing that he had been cutting a few hogs with money obtained from other persons, whom they supposed he wanted to pay, acquiesced in said shipments which he had already made in his own name, on condition that they should retain out of the proceeds of the drafts an amount corresponding with their interest in the property on which the drafts were predicated, and should also have the excess of the proceeds of the pork and shoulders beyond the amount necessary to cover said drafts. They, however, not only did not waive any rights in reference to the hams or subordinate them to the agreement between McCabe and the Appellants, but it was expressly agreed between him and them that they (the Appellees) should ship the hams in their names and draw nothing against them until they were sold. In violation of this agreement McCabe shipped the hams, secretly, to the Appellants in his own name. As soon as the Appellees discovered his bad faith, they, by telegram and letter,

both of which the Appellants received before the hams reached them and before McCabe had attempted to procure an advance on them, informed the Appellants of all the aforesaid facts, and notified them that the hams were their property, and that the Appellants must not advance on them to McCabe or otherwise treat them as his. They also sent on their agent, Elliott, with directions not to allow the hams to go into the Appellants' possession, but to replevy them, unless they would agree to receive them as the property of the Appellees. (53, 71, 72, 73)

Elliott arrived before the hams, communicated to the Appellants his instructions, showed them the warehouse receipts, made arrangements to procure a proper replevin bond if necessary, told them he would replevy the hams unless they agreed to receive them as the property of the Appellees, and also told them that the Appellees were entitled to and would claim any balance which would be coming to McCabe out of the proceeds of the pork and shoulders. The Appellants were convinced that the hams belonged to the Appellees, said it was unnecessary to replevy them and promised not to treat with McCabe in reference to them. It was finally arranged that the Appellees should get an order or an assignment of the bill of lading from McCabe, and that the Appellants would then place the hams on their books to the credit and as the property of the Appellees. This was required only because the Appellants did not like to assume the responsibility of identifying the hams as those covered by the warehouse receipts. (Pages 6, 7, 53, 71, 72, 73.) The hams had not been originally and were not then contemplated as part of the security for the drafts. The pork and shoulders, on which they were specifically drawn, were, when the advances were made, and continued to be up to the time of Elliott's visit, full security therefor. See letters, pages 5, 8, 9, 10, and admission on pages 75 and 76.

The order from McCabe was obtained and the Appellants notified of it by letter dated the 27th of Feb., 1865, in which the

Appellees, writing with a knowledge of and relying upon the arrangement with Elliott, and not speaking with legal precision, enclosed a memorandum of property covered by the order, and spoke of it as subject to the two drafts, meaning that the pork and shoulders, were, as the preceding statement shows was the fact, subject thereto, but not that the hams were or that they were willing to impose on them a liability from which they were then exempt, and for the admission or creation of which they had no motive or consideration. See Hughes' testimony, 53, 54, 55 and letter p. 59. See order p. 19. The special assignment to the Appellees of the bill of lading for the hams was subsequently obtained, to enable the Appellants to make claim on the rail road company for a missing package of them. Pages 55, 61. If the dealings between McCabe and the Appellants had been binding as between them and the Appellees, the Appellants would have been bound to advance $ 40 per tierce on the hams—$ 39,320 on the 983 tierces, a much larger amount than that claimed for the entire proceeds of them in this suit. Neither party, however, treated that arrangement as in force, except so far as it had been acquiesced in by the Appellees in reference to the drafts upon the pork and shoulders. New negotiations were entered into for advances on the hams. The Appellees asked for and the Appellants promised an advance on them of $ 25,000, but refused afterwards to advance more than $ 10,000. Pages 16, 17, 20, 26. The Appellants sought and obeyed the instructions of McCabe in reference to the sales of the meats, who thinking they would advance in price, desired that they should not be sold, and disregarded altogether the wishes of the Appellants, who entertaining a different opinion, desired them to be sold as soon as possible. (Pages 22, 3, 6, 9 and 32.) When the market began to rally temporarily, the Appellees requested that what was left should not be sold unless a decline should begin, (p. 36 and 37,) and on the 29th July expressly directed that no more should be sold until they were heard from. The Appellants

disregarded that order, and sold, as they had disregarded the wish of the Appellees to sell when the latter thought the time favorable for so doing. Pages 37, 8. The Appellees wished some of the provisions sent to New York to sell, but the Appellants refused to respect this as they had refused to respect every other wish expressed by the Appellees in regard to them. (Pages 27, 29, 40, 41, 43.)

The Appellants, in their interview with Elliott and in their correspondence with the Appellees, (73, 14, 15, 19, 7,) promised to enter the hams on their books in the names of the Appellees and to their credit. Instead of doing so, they kept them in McCabe's name, made out the account sales in his name, and insisted that they were entitled to deduct from the proceeds not only the $10,000 they had advanced to the Appellants thereon, but also the previous advances they had made to McCabe on the specific security of the pork and shoulders.

POINTS.

The Appellees will contend that:

1st. Their title to the hams was not derived from any agreement of the Appellants, or from any thing which occurred after the hams came into the possession of the Appellants, but from the warehouse receipts, which made them their property before they left Chicago.

Gibson *vs.* Stevens, 8 Howard, 397.

See Appellants 1st prayer, pages 7 and 8 of the Record.

2nd. Even if McCabe had received an advance on them before the Appellants became aware of this title, it would not have been binding on the Appellees.

Wilson *vs.* Nason, 4 Bosworth, N. Y., 155.

3d. They were informed of the Appellees' rights before the hams reached them. *A fortiori* they are not entitled to deduct

from the proceeds a general balance due by McCabe for advances made on other articles.

Sweeney *vs.* Easter, 1 Wallace, 166.

4th. The hams being their property, could not cease to be theirs or become subject to a lien in favor of any one else except by some contract of their own, founded upon a legally adequate consideration, of which there is no pretence.

5th. McCabe had entered into no obligation to ship the hams to cover possible deficiencies which might arise from advances made on the other meats. The advance on each was specific—the bill of lading always accompanying the draft to show on what it was drawn. Even as against him, the Appellants had no claim on the hams till in their possession, and he might have diverted the consignment after it was made. If, however, the arrangement between him and the Appellants had been different, the Appellees only acquiesced in the shipment of the other meats and the imposition of a lien thereon by him. They reserved their property in the hams and right to ship them in their own names, and so notified the Appellants. They and their property were bound to the extent of that acquiescence, but no further. See letters, pages 4, 5, 6, 7, 8, 9, 10 and parol testimony, pages 52, 53, 54, 66, 71, 72, 73.

Dunlap's Paley, 139.

Woodruff *vs.* Nashville & C. R. R. Co., 2 Head. Tenn. 87.

The Appellants recognized McCabe's right to divert the consignment, suggested the probability of its having been exercised, made no objection to it as far as they were concerned, and did not even enquire whether the hams had been consigned to them or not.

Letter of Febr'y 3d, p. 12.
" " Jan'y 26, p. 8.

6th. If McCabe had been under an obligation to ship the hams and the Appellees had been bound by it, they would have been entitled to the corresponding benefits of the contract—to the advance of $ 40 per tierce on the 983 tierces, to $ 39,323, which is more than the amount they now claim out of them. If they had meant to subordinate their rights to that agreement, they could have got from him drafts to that amount which the Appellants would have been bound to accept. But they never asked for more than $25,000, and the Appellants refused to advance even that.

Allen *vs.* Williams, 12 Pick. 297.
Flanders on Shipping, 465.
Coolidge *vs.* Payson, 2 Wheaton, 75.
Lewis *vs.* Kramer & Rahn., 3 Md. 289.

The Appellees claimed the hams as their own, claimed none of the benefits, admitted none of the liabilities arising from the contract between McCabe and the Appellants, except as to the shipment of the pork and shoulders and the lien imposed on them. They waived no title to the hams but reserved the right to deal with them as their own property. Pages 6, 7, 53, 66, 71, 72, 73.

7th. Their receiving a portion of the proceeds of the drafts drawn on the pork and shoulders did not affect their right to the hams. It was received under an agreement with McCabe that the hams were to continue their own, be shipped by them in their own names, on their own account, and they so wrote the Appellants before the hams went into their possession. Any one might have negotiated the drafts and recovered the amount of them from the Appellants. It was immaterial to the Appellants who received the proceeds, and the Appellees received them, as a payment from McCabe, and not as an advance from Appellants.

8th. The taking by the Appellees of the order for the proceeds of pork and shoulders and the assignment of the bill of lading for the hams did not impair the right they already had to the hams. They do not claim title under those papers. They were obtained by agreement and only to remove difficulty. The order for the proceeds of meats which were subject to the lien, did not impose a lien on the hams which were not subject to it.

9th. The expression used in the Appellees' letter of the 27th of February, cannot have the effect of subjecting the hams to a lien or rendering the proceeds of them liable to a deduction for the drafts which had been drawn on the pork and shoulders in view of all the facts.

10th. Even if they had meant and had expressly promised to pay these drafts themselves or make their hams liable for them, such a promise would have been void for want of consideration. The Appellants as acceptors were bound to pay them to the Appellees, and the latter if compelled as endorsers to pay them to any one else might have recovered them from the former. It was a debt due by McCabe to the Appellants for which the Appellees were in no way liable, and a promise by them to pay it or make their property responsible for it was a promise to answer for the default of another, *nudum pactum*, and void under the Statute of Frauds.

Gist *vs.* Cockey, 7 Harris & Johnson, 140.
Robinson *vs.* Marshal, 11 Md. 253, 4.
Northern Central R. R. Co. *vs.* Prentiss, Ibid, 123, 27.
Sumwalt *vs.* Ridgeley, 20 Md. 107.

11th. Admissions are useful to determine doubtful questions, not to take away or qualify clear rights. They must be deliberate, "not fished out of loose expressions in mercantile correspondence."

Cumberland Coal and Iron Co. *vs.* Sherman, 20 Md., 149.

12th. The letter was not intended to be an admission of any such liability. The Appellees had no motive or consideration for waiving their clear right to the hams, or the benefit of the arrangement which had been made with Elliott in reference to them, and supposed the letter would be interpreted, as it ought to have been, with reference to that arrangement.

Hughes' Testimony, pages 53, 4.

13th. They might have replevied the hams from the rail road company before they reached the Appellants, or from the latter afterwards, on tendering the freight and other similar charges on them specifically. Elliott came prepared to do so unless the Appellants would agree to receive them as the property of the Appellees, (145, 7, 8.) The Appellants had no right after notice of the Appellees' title to receive them otherwise. The amount the Appellees would have been compelled to tender before replevying them is still the test as to the character and amount of liability to which they were then subject. If the Appellees had expressly agreed without consideration to subject them to other charges for which they were not then liable, the contract would have been void.

14th. If the hams had never been shipped, the loss arising from deficiency of the other meats to cover advances made on them would have fallen on the Appellants, not on the Appellees. Nothing in the case justifies the transfer of the loss to the latter. The Appellants having exhausted their security seek now to exhaust that of the Appellees, who are creditors of McCabe, and losers by him to a much larger amount than the Appellants.

15th. Although factors have a lien upon goods actually in their hands or the proceeds of them for a general balance, it is only for a balance due by the principal against whom it is sought to be asserted.

The balance for the drafts drawn on the pork and shoulders was due by McCabe. Whether the Appellants promised to receive the hams as the property of the Appellees or not, after notice of the rights of the latter they were not entitled to receive them otherwise. The Appellants' effort is simply to make one man's property liable for the debts of another—to make the Appellees' hams to which they waived no rights without consideration, liable for McCabe's debts, because the Appellees agreed for an adequate consideration that the pork and shoulders might be liable therefor.

Wilmerding *vs.* Hart, Hill & Denio's Reports—Lalor's Supplement (N. Y.) 305.

16. All the facts assumed in the Court's instruction were admitted, (80,) and the Court, construing the letters between the parties according to their proper legal effect and force, was right in substantially saying to the jury, that they contained no sufficient agreement, whereby the Appellants had acquired the right to charge the property of the Appellees for advances made on other property, to McCabe and not to the Appellees.

In the long and labored printed argument submitted by the Appellants, as their brief, they attempt to show that the Judge below excluded facts from the jury, which would have tended to alter the legal conclusions deduced from the other facts enumerated in his instruction. But all the omitted facts are controlled by the written correspondence, which the Court properly interpreted for itself. Unless they go to show that the Appellees, for a valuable consideration, agreed to make their hams responsible for McCabe's debts, the facts excluded by the Judge can, by no possibility, affect the soundness of the Court's conclusions, and the Appellees will contend that they show nothing which amounts, in law, to any agreement of the sort. They were therefore properly excluded by the Court, as matter of law.

The Appellants' prayers were properly rejected, because they all fell short of the law of the case. They went upon the theory (78, 9,) that the Appellees could fix a lien on their property for McCabe's balance, by something less than an agreement to that effect, entered into for valuable consideration. They assumed that if the jury could establish the relation of principal and factor, between the Appellants and Appellees, as to all the consignments, a lien upon all would follow as matter of law and matter of course, without reference to the circumstances under which that relation was created, or the intention of the parties who entered into it. This theory and assumption, the Appellees submit, are wholly untenable. The fact that Gregg & Hughes claimed the surplus which might arise out of the sale of the pork and shoulders, after Drakeley & Fenton's advances to McCabe should be repaid, and in virtue of such claim corresponded or advised as to such sale, rendered Drakeley & Fenton the factors of Gregg & Hughes, in no sense that could make the latter responsible for McCabe's debt, or affix a lien for it on the hams, because they corresponded or advised as to the sale of these also, which were their own absolute and unencumbered property.

The lien of factors for a general balance is an implication of law, and therefore never arises where there is a special arrangement, or the circumstances rebut such implication. Special circumstances indeed always control it.

Cross on Lien, 259, 60, (34 Law Library, 172.)

In re Leith, 1 Privy Council Appeals, 305.

Young *vs.* Bank of Bengal, 38 E. C. L. R., 633, 4, (1 Deacon, 622.)

Neponcet Bank *vs.* Leland, 5 Metcalf, 262.

Randel *vs.* Brown, 2 Howard, 425.

Story on agency Sec 381

The doctrine of lien applies only where the deposit of the goods is in the nature of a pledge, and does not apply where it is made for a special purpose.

Walker *vs.* Birch, 6 T. R., 262, 3.

Nor does any lien arise for antecedent debts of the principal, by reason of the subsequent creation of the relation of principal and factor.

Houghton *vs.* Mathews, 3 Bos. & Pul., 488, 9.

The property on which the lien is sought to be fixed must not only belong to the party from whom the debt is due to the factor, but it must come to his hands as the agent of that party.

Bruce *vs.* Wait, 3 Mees. & W., 15.

Russell on Factors and Brokers, 206, (48 Law Lib'y, 135.)

And where the factor is not acting in the capacity of general factor, but only in regard to a special consignment or adventure, he has no lien for a general balance.

DeWolf *vs.* Howland, 2 Paine, 364, 5.

These well recognized principles are conclusive, *a fortiori*, where the effort is, as here, to establish a lien against one principal, for advances made to another, by a sort of process analogous to *merger* at common law.

Nor is there any justice in the pretension of the Appellants' brief, (33,) that because the Appellees "were the legal owners, and received the proceeds of both consignments," they ought to be made liable for McCabe's debts. The Appellees were, it is true, the owners of all the property, and they received the proceeds of the shipments of pork and shoulders. But they received those proceeds from McCabe, and not from the appellants, precisely as any other payee of McCabe's drafts would have received them, and they fairly consented, without hesitation, to allow the pork and shoulders to stand as security for the payment of the drafts specifically drawn against them. But the hams went into the possession of the Appellants as the property of Gregg & Hughes and not of McCabe. The Appellants made no advances to McCabe upon them, and had no right to demand their shipment

even from him. They advanced on the pork and shoulders only, at their own rates, the values being then ample to cover their acceptances. They asked no further shipments of hams to protect them, and no such shipments formed any part of the consideration of their advances on the pork and shoulders. On the contrary, (p. 5, letter of 18th Jan'y, 1865,) they deprecated any but small shipments of hams, and expected to advance specifically on any that might be made. (4 and 5.) The shipment of hams was made to them by McCabe, in fraud and without the knowledge or consent of Gregg & Hughes. Gregg & Hughes might have replevied the hams *in transitu*, or from the Appellants after they had received them, (as has been already said,) and would have done so (72, 3 and 4,) but for the amicable arrangement which was supposed to render legal proceedings unnecessary. The Appellants, therefore, had no right to receive the hams, except with the assent of Gregg & Hughes, and did not, but received them with full notice of the title of Gregg & Hughes, which is not disputed. How they could acquire a lien upon them, under such circumstances, for the general balance of McCabe, or how Gregg & Hughes could agree to their doing so, without motive or consideration, it is difficult to imagine. To contend for such a result, is simply and substantially to assume that the latter could not reclaim a portion of their own property, fraudulently sent away from them, and on which no advances had been made, without saddling it with advances previously made on other property of theirs to the party who was engaged in defrauding them. It is further to assume, that, by making the Appellants their factors, for the sale of stolen property reclaimed, they *ipso facto* bound that property, in law, to the Appellants, for debts previously due them as factors of the thief.

S. T. WALLIS,
J. H. THOMAS,
For Defendants in Error.